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Sup. Ct.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1946

No. 103

THE GOSPEL ARMY, A CORPORATION,
APPELLANT,

vs.

THE CITY OF LOS ANGELES, BOARD OF SOCIAL SERVICE COMMISSIONERS, DEPARTMENT OF SOCIAL SERVICE, AND DAN O. HOYE, CITY CONTROLLER

APPEAL FROM THE SUPREME COURT OF THE STATE OF CALIFORNIA

FILED MAY 9, 1946.

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INDEX

	Original	Print
Record from Superior Court of Los Angeles County	1	1
Amended complaint	1	1
Answer to amended complaint	6	4
Findings of fact and conclusions of law	13	8
Judgment	19	11
Notice of appeal	22	13
Praecipe for record	23	14
Reporter's transcript of hearing	28	15
Caption and appearances	28	15
Testimony of Clarence O. Patton	29	16
Ruth Colbert	44	26
Clarence O. Patton (recalled)	46	27
James A. Perigo	74	46
Ruth Colbert (recalled)	81	51
Defendant's motion for non-suit and denial thereof	98	62
Testimony of Ferris Miller	99	62
Reporter's certificate (omitted in printing)	123	
Stipulation as to transcript of hearing	124	77
Clerk's certificate	125	78

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., SEPT. 24, 1946.

—6732

	Original	Print
Proceedings in Supreme Court of California	126	78
Order transferring cause from District Court of Appeals	126	78
Opinion, Traynor, J.	127	79
Dissenting opinion, Carter, J.	156	98
Dissenting opinion, Edmonds, J.	200	124
Order denying rehearing	219	136
Material Register of Actions entries	220	136
Judgment	221	137
Petition for appeal	225	138
Assignments of error	226	138
Order allowing appeal	254	155
Citation and service (omitted in printing)	257	
Bond on appeal (omitted in printing)	260	
Order enlarging time to docket and file record	264	156
Affidavit of Robert H. Wallis	266	156
Praecipe for transcript of record	269	158
Clerk's certificate (omitted in printing)	272	
Statement of points to be relied upon and designation of parts of record to be printed	274	159
Appellees' designation of portions of record to be printed	290	167
Order postponing further consideration of the question of jurisdiction	295	168

[fol. 1] [File endorsement omitted]

IN SUPERIOR COURT OF LOS ANGELES COUNTY

No. 470368

THE GOSPEL ARMY, a Corporation, Plaintiff,

vs.

THE CITY OF LOS ANGELES, a Municipal Corporation, the Board of Social Service Commissioners, Department of Social Service, Dan O. Hoye, City Controller, Defendants

AMENDED COMPLAINT—Filed June 8, 1942

Plaintiff complains of the defendants and for cause of action alleges as follows, to-wit:

I

That at all times hereinafter mentioned the plaintiff was and now is a corporation organized and existing under and by virtue of the laws of the State of California and the District of Columbia, and prior to the filing of this amended complaint has been, and now is, engaged in religious activities in the County of Los Angeles, State of California.

II

That the City of Los Angeles is now, and was at all times herein mentioned, a municipal corporation, organized and existing under and by virtue of the laws of the State of California; that the Board of Social Service Commissioners and the Department of Social Service, are a branch and agency of the City of Los Angeles, having the control and enforcement of the ordinances of the City of Los Angeles pertaining to Charities; that Dan O. Hoye is the duly qualified and acting Controller of the City of Los Angeles, having under his control and a part of his duties the collection of [fol. 2] licenses and the enforcement of the ordinances of said City of Los Angeles pertaining thereto; that John Doe and Jane Doe are sued herein as fictitious defendants and their true names will be inserted herein when same have been ascertained.

III

That the plaintiff is a duly constituted and functioning religious organization, engaged exclusively in the promulgation, by literature and word of mouth, of its religious beliefs, by and through its auxiliaries, and in the procuring of donations in the form of money and articles of value in the prosecution and furtherances of its religious activities.

IV

That the said defendants have notified the plaintiff that it is subject to the rules, regulations and laws of the said defendants pertaining to charities and relief and that the said plaintiff organization is subject to the enforcement of said rules and regulations by the Board of Social Service Commissioners and the Department of Social Service, and that before said plaintiff organization can continue their religious activities in the City of Los Angeles they must first apply for and receive from the said Board of Social Service Commissioners and Department of Social Service a permit authorizing said plaintiff organization to continue their religious activities in said City of Los Angeles, the [fol. 3] said Board of Social Service Commissioners and Department of Social Service having full power, under the ordinances of said City of Los Angeles, to pass on and reject all applications coming before them; that the defendant Dan O. Hoye, the City Controller, of the City of Los Angeles, has notified and demanded of the plaintiff that it must pay to the City of Los Angeles, through his office, a license to operate the store of plaintiff, which store is being conducted by plaintiff for the sale and disposal of salvaged personal property donated and given to the said plaintiff by the general public, the proceeds derived therefrom is used by the plaintiff in the furtherance of said religious organization, and that said Dan O. Hoye and all of the other defendants contend and state that the plaintiff is violating the ordinances of the City of Los Angeles pertaining thereto and is subject to criminal prosecution, and the said defendants have and are threatening criminal prosecution of this plaintiff.

V

That if this plaintiff is required to obtain a permit and the payment of the license as a condition of their soliciting and receiving donations as aforesaid, to be used in the furth-

erance of said religious activities, will amount to a prior restraint on the exercise of their religious activities within the meaning of the Constitution of the United States, both as to the First and Fo-rteenth Amendment thereof, and is an infringement upon the free exercise of their religious [fol. 4] liberty as protected by the said constitution.

VI

That unless the said defendants are enjoined and restrained from doing the things hereinbefore mentioned the rights of the plaintiff to worship and carry on said religious activities their right to the free exercise of their religious liberty will be infringed and said plaintiff will suffer irreparable injury therefrom.

VII

That for all of the reasons aforesaid, there is no plain, speedy or adequate remedy at law for the redress of the aforesaid wrongs committed and threatened by the defendants.

Wherefore, plaintiff prays judgment that the defendants, and each of them, and any and all persons, associations, departments, under whom said defendants, or any of them, may be employed or acting, and any and all persons, associations or departments who may be acting, or claiming by, through or under said defendants, or any of them, be perpetually restrained and enjoined from the further interference, and threatened acts, which would in anyway prevent the free exercise of the religious liberty of the said plaintiff.

And for such other and different relief as shall appear just and equitable in the premises.

Robert H. Wallis, Attorney for Plaintiff.

[fol. 5] (Verification.)

(Endorsed) Received Jun. 8 '42 4:00, City Attorney, Los Angeles, Cal., by (Illegible).

[File endorsement omitted.]

[fol. 6] IN SUPERIOR COURT OF LOS ANGELES COUNTY

ANSWER TO AMENDED COMPLAINT—Filed November 17, 1942

Come now the defendants, The City of Los Angeles, the Board of Social Service Commissioners, the Department of Social Service, and Dan O. Hoye, City Controller, in the above entitled action, and answering plaintiff's amended complaint on file herein admit, deny and allege as follows:

I

Answering paragraph I thereof deny that plaintiff has been or now is engaged in religious activities.

II

Answering paragraph III thereof deny that plaintiff is a religious orgapization, engaged in the promulgation of religious beliefs or in the procuring of donations in the prosecution and futherance of its religious activities, and further deny that plaintiff has, or is capable of having, any religious belief.

III

Answering paragraph IV thereof admit that defendants have notified plaintiff that it is subject to the rules, regulations and laws of defendant City pertaining to charities and relief and in this connection allege that plaintiff is subject to the sections of the charter and the ordinances of the City of Los Angeles pertaining to charities and relief, being particularly sections 70 to 88 inclusive and [fol. 7] section 215 of the charter of the City of Los Angeles and sections 44.01 to 44.19 inclusive, of ordinance No. 77,000 as amended, which ordinance was enacted on September 30, 1936 and became effective on November 12, 1936 and was entitled, "An Ordinance enacting a revision and codification of the regulatory and penal ordinances of the City of Los Angeles, to be known as the Los Angeles Municipal Code, providing penalties for violation of the provisions thereof and repealing all ordinances and parts of ordinances in conflict therewith," and which ordinance in so far as the sections thereof in question are concerned, was amended by ordinance No. 80,920 which was enacted March 1, 1939 and became effective April 8, 1939, ordinance No. 81618 which was enacted September 15, 1939 and became

effective October 19, 1939, and ordinance No. 84,121 which was enacted February 5, 1941 and became effective March 14, 1941.

These defendants deny that they or any of them have notified plaintiff that before plaintiff can continue its religious activities in the City of Los Angeles it must first apply for and receive from the Board of Social Service Commissioners and the Department of Social Service a permit authorizing plaintiff to continue its religious activities in the City of Los Angeles.

These defendants further allege that before plaintiff can continue its activities in the City of Los Angeles it must first apply for and receive from said Board of Social [fol. 8] Service Commissioners and said Department of Social Service a permit authorizing plaintiff so to do; deny that plaintiff has carried on or is carrying on religious activities and deny that said charter and said ordinances empower said Board of Social Service Commissioners and said Department of Social Service arbitrarily to pass on and reject any applications of plaintiff to carry on religious activities and allege that said ordinances apply only to charitable activities; but said defendants do allege that before plaintiff, its officers or employees, may solicit any contributions for charitable purposes plaintiff must file with said Department of Social Service Commissioners a notice of intention to solicit charitable contributions, as provided in section 44.05 and 44.06 of said Municipal Code.

Said defendants further allege that they contend that under the provisions of sections 24.01 as amended by ordinance No. 79,314 which was enacted March 3, 1938 and became effective April 8, 1938, ordinance No. 83,898 which was enacted December 26, 1940 and became effective February 3, 1941, ordinance No. 83,743 which was enacted December 2, 1940 and became effective January 4, 1941, ordinance No. 84, 531 which was enacted April 4, 1941 and became effective May 9, 1941, ordinance No. 83,646 which was enacted November 15, 1940 and became effective December 26, 1940 and ordinance No. 82, 638 which was enacted [fol. 9] April 3, 1940 and became effective May 9, 1940, and 22.10 as amended by ordinance No. 79,315 which was enacted March 3, 1938 and became effective April 8, 1938, of said Municipal Code a permit must be secured from the Board of Police Commissioners of the City of Los Angeles

for the operation of the business which has been and now is being conducted in said City of Los Angeles, and said defendants further contend that a business license must be secured from said City of Los Angeles under sections 21.100 as amended by ordinance No. 77,297 which was enacted December 8, 1936 and became effective January 10, 1937, and 21.134 of said Municipal Code for the conducting of said business, and if said business is the one referred to in paragraph IV of plaintiff's said complaint then it is the contention of these defendants that plaintiff must secure said permits and licenses and in not doing so plaintiff is violating said ordinances and is subject to criminal prosecution therefor.

Said defendants deny generally and specifically each and every other allegation in said paragraph contained except those allegations herein specifically admitted.

IV

Answering paragraph V thereof deny that the requirements as to permit and license fees set out in paragraph III hereof will amount to a prior restraint on the exercise of religious activities within the meaning of the Constitution of the United States, and deny that such require-[fol. 10] ments are an infringement on the free exercise of religious liberty as guaranteed by said Constitution.

V

Answering paragraph VI thereof deny that unless defendants are enjoined and restrained from enforcing the provisions of the charter and ordinances of the City of Los Angeles, mentioned in paragraph III hereof, that the rights of plaintiff to worship and carry on its religious activities or plaintiff's right to the free exercise of religious liberty will be infringed and that plaintiff will suffer irreparable injury or any injury thereby.

VI

Answering paragraph VII thereof deny generally and specifically each and every allegation therein contained.

For a second separate and distinct answer and defense these answering defendants allege:

I

That the Board of Social Service Commissioners and the Department of Social Service of the City of Los Angeles have no existence separate from said City and are incapable of being sued.

Wherefore, these answering defendants pray that said action be forthwith dismissed as to defendants Board of Social Service Commissioners, Department of Social Service, and that defendant Dan O. Hoye, City Controller and defendant City of Los Angeles, have judgment for their [fol. 11] costs, and such other and further relief as may seem just and equitable.

Ray L. Chesebro, City Attorney, by Robert W. Anderson, Deputy City Attorney, Attorneys for Defendants.

AFFIDAVIT OF SERVICE BY MAIL

STATE OF CALIFORNIA,
County of Los Angeles, ss:

Mildred McPherson being first duly sworn, deposes and says:

That she is and was, at all times herein mentioned, a citizen of the United States and a resident of the County of Los Angeles, over the age of eighteen years and not a party to nor interested in the within action; That her business address is Room 459, City Hall, City of Los Angeles, County of Los Angeles, State of California;

That on the 17th day of November, 1942, she served the attached Answer to Amended Complaint upon the attorney for Plaintiff by depositing a copy thereof, inclosed in a sealed envelope with postage thereon fully prepaid, in the United States postoffice mail box at the City Hall addressed as follows: Robert H. Wallis, Esq., 328 American Avenue, Long Beach, California, and that the person on [fol. 12] whom said service was made has his office at a place where there is a delivery service by mail, and that there is a regular communication by mail between the place of mailing and the place so addressed.

MILDRED MCPHERSON.

Subscribed and sworn to before me this 17th day of November, 1942.

Stanley Matthews, Notary Public in and for the County of Los Angeles, State of California. (Seal)

[File endorsement omitted.]

[fol. 13] In Superior Court of Los Angeles County

Findings of Fact and Conclusions of Law—Filed June 28, 1943

The above entitled cause having duly and regularly come on for trial on the 10th and 11th days of March, 1943, in the above entitled Court, Department 37, before the undersigned Judge presiding, without a Jury, a Jury having been waived by the parties; the Plaintiff appearing by Robert H. Wallis, its attorney; the Defendants appearing by Wilbur Bassett, Deputy City Attorney, and evidence both oral and documentary having been duly introduced by the respective parties, and the Court having been fully advised in the premises, and the cause having been duly submitted to the Court for decision, the Court now makes its Findings of Fact and Conclusions of Law, to-wit:

Findings of Fact

I

It is true that the Plaintiff, the Gospel Army, was and now is a Corporation, organized and existing under and by virtue of the laws of the State of California and the District of Columbia, and has and now is engaged in religious activities in the County of Los Angeles, State of California.

II

It is true that the City of Los Angeles is now and was at all times herein mentioned a Municipal Corporation, organized and existing under and by virtue of the laws of the State of California; that the Board of Social Service [fol. 14] Commissioners and the Department of Social Service are a branch and agency of the City of Los Angeles, having the control and enforcement of the ordinances of said City of Los Angeles pertaining thereto.

III

It is true that the Plaintiff is a duly constituted and functioning religious organization, engaged exclusively in the promulgation, by literature and word of mouth, of its religious beliefs, by and through its auxiliaries, and in the procuring of donations in the form of money and articles of value in the prosecution and furtherance of its religious activities.

IV

It is true that the said Defendants have notified the Plaintiff that it is subject to the rules, regulations and laws of the said Defendants pertaining to charities and relief and that the said Plaintiff organization is subject to the enforcement of said rules and regulations by the Board of Social Service Commissioners and the Department of Social Service, and that before said Plaintiff organization can continue their religious activities in the City of Los Angeles they must first apply for and receive from the said Board of Social Service Commissioners and Department of Social Service a permit authorizing said Plaintiff organization to continue their religious activities in said city of Los Angeles, the said Board of Social Service Commissioners [fol. 15] and Department of Social Service having full power, under the ordinances of said City of Los Angeles, to pass on and reject all applications coming before them; that the Defendant, Dan O. Hoye, the City Controller, of the City of Los Angeles, has notified and demanded of the Plaintiff that it must pay to the City of Los Angeles, through his office, a license to operate the store of Plaintiff, which store is being conducted by Plaintiff for the sale and disposal of salvaged personal property donated and given to the said Plaintiff by the general public, the proceeds derived therefrom is used by the Plaintiff in the furtherance of said religious organization, and that said Dan O. Hoye and all of the other defendants contend and state that the Plaintiff is violating the ordinances of the City of Los Angeles pertaining thereto and is subject to criminal prosecution, and the said defendants have and are threatening criminal prosecution of this Plaintiff.

V

It is true that if this Plaintiff is required to obtain a permit and the payment of the license as a condition of

their soliciting and receiving donations as aforesaid, to be used in the furtherance of said religious activities, will amount to a prior restraint on the exercise of their religious activities within the meaning of the Constitution of the United States, both as to the First and Fourteenth Amendment- thereof, and is an infringement upon the free [fol. 16] exercise of their religious liberty as protected by the said constitution.

VI

It is true that unless the said Defendants are enjoined and restrained from doing the things hereinbefore mentioned the rights of the Plaintiff to worship and carry on said religious activities their right to the free exercise of their religious liberty will be infringed and said Plaintiff will suffer irreparable injury therefrom.

VII

It is true that for all of the reasons aforesaid, there is no plain, speedy or adequate remedy at law for the redress of the aforesaid wrongs committed and threatened by the Defendants.

And, from the foregoing facts, the Court, as Conclusions of Law, finds as follows:

CONCLUSIONS OF LAW

I

That a permanent injunction should issue herein restraining and enjoining the Defendants and each of them and any and all persons, associations, departments under whom said Defendants or any of them may be employed or acting and any and all persons, associations or departments who may be acting or claiming by, through or under said Defendants, or any of them from the further interference and threatened acts, which would in any way prevent [fol. 17] the free exercise of a religious liberty of said Plaintiff.

The Court hereby orders and directs that judgment be entered accordingly, with costs in favor of the Plaintiff and against the Defendants, to be taxed by the Clerk of this Court, and to be inserted in the judgment to be entered hereon.

Done in Open Court this 28 day of June, 1943.
Harold B. Jeffery, Judge of the Superior Court.

(Affidavit of Service by Mail—1013a, C. C. P.)

STATE OF CALIFORNIA,
County of Los Angeles, ss:

Robert H. Wallis, being first duly sworn, says: That affiant is a citizen of the United States and a resident of the County of Los Angeles; that affiant is over the age of eighteen years and is not a party to the within and above entitled action; that affiant's business/residence address is: 328 American Ave., Long Beach, Calif., that on the 24 day of April, 1943, affiant served the within Findings of Fact on the Defendants in said action, by placing a true copy thereof in an envelope addressed to the attorney of record for said Defendants at the residence/office address of said attorney, as follows: "Wilbur Bassett, Deputy City Attorney, City Hall, Los Angeles" and by then sealing said [fol. 18] envelope and depositing the same, with postage thereon fully prepaid, in the United States Post Office at Los Angeles, California, where is located the office of the attorney for the person by and for whom said service was made.

That there is delivery service by United States mail at the place so addressed or/and there is a regular communication by mail between the place of mailing and the place so addressed.

Robert H. Wallis.

Subscribed and sworn to before me this 24 day of April, 1943. I. A. Merrill, Notary Public in and for the County of Los Angeles, State of California. My Commissioner Expires No. 24, 1943. (Seal.)

[File endorsement omitted.]

[fol. 19] IN SUPERIOR COURT OF LOS ANGELES COUNTY

JUDGMENT—Filed June 28, 1943

The above entitled cause having duly and regularly come on for trial on the 10th and 11th days of March, 1943, in the

above entitled Court, Department 37, before the undersigned Judge presiding, without a Jury, a Jury having been waived by the parties; the Plaintiff appearing by Robert H. Wallis, its attorney; the Defendants appearing by Wilbur Bassett, Deputy City Attorney, and evidence both oral and documentary having been duly introduced by the respective parties, and the Court having been fully advised in the premises, and the Court having duly made and filed its Findings of Fact and Conclusions of Law, wherein it found that the Plaintiff is entitled to this Judgment, it is

Ordered, Adjudged and Decreed:

That the Defendants and each of them and any and all persons, associations, departments under whom said Defendants or any of them may be employed or acting and any and all persons, associations, or departments who may be acting or claiming by, through or under said Defendants or any of them are hereby permanently restrained and enjoined from the further interference and threatened acts, which would in any way prevent the free exercise of the religious liberty and freedom of worship of the said Plaintiff.

Plaintiff is entitled to its costs herein expended in the [fol. 20] sum of $25.25.

Done in Open Court the 28 day of June, 1943.

Harold B. Jeffery, Judge of the Superior Court.

(Affidavit of Service by Mail—1013a, C. C. P.)

STATE OF CALIFORNIA,
County of Los Angeles, ss:

Robert H. Wallis, being first duly sworn, says: That affiant is a citizen of the United States and a resident of the County of Los Angeles; that affiant is over the age of eighteen years and is not a party to the within and above entitled action; that affiants business/residence address is: 328 American Ave., Long Beach, Calif., that on the 24 day of April, 1943, affiant served the within Judgment on the Defendants in said action, by placing a true copy thereof in an envelope addressed to the attorney of record for said defendants at the residence/office address of said attorney, as follows: "Wilbur Bassett, Deputy City Atto-n-y., City Hall, Los Angeles, Calif." and by then sealing said envelope and depositing the same, with postage thereon fully prepaid,

in the United States Post Office at Los Angeles, California, where is located the office of the attorney for the person by and for whom said service was made.

That there is delivery service by United States mail at the [fol. 21] place so addressed or/and there is a regular communication by mail between the place of mailing and the place so addressed.

Robert H. Wallis.

Subscribed and sworn to before me this 24 day of April, 1943. I. A. Merrill, Notary Public in and for the County of Los Angeles, State of California. My Commission Expires Nov. 24, 1943. (Seal.)

[File endorsement omitted.]

[fol. 22] IN SUPERIOR COURT OF LOS ANGELES COUNTY

NOTICE OF APPEAL—Filed July 9, 1943

To the Plaintiff, the Gospel Army, a Corporation, and to the Clerk of the Above Entitled Court, and to All Other Persons Who May Be Interested:

You, And Each Of You, Will Please Take Notice that the City of Los Angeles, a Municipal Corporation, the Board of Social Service Commissioners, Department of Social Service, and Dan O. Hoye, City Controller, hereby appeal to the Supreme Court of the State of California from the judgment made in the above entitled action in favor of the plaintiff, The Gospel Army, a corporation, and against the said defendants, and entered on or about the 29th day of June, 1943, in Judgment Book 1346, page 174, of the records of the Superior Court of the County of Los Angeles, California, and from the whole of said judgment aforesaid.

Dated at Los Angeles, California, July 9, 1943.

Ray L. Chesebro, City Attorney, and Wilbur Bassett, Deputy City Attorney, Attorneys for Defendants.

[File endorsement omitted.]

[fol. 23] IN SUPERIOR COURT OF LOS ANGELES COUNTY

PRAECIPE FOR RECORD—Filed July 12, 1943

To the Clerk of the Superior Court of the County of Los Angeles, and to the Gospel Army, a Corporation, Plaintiff and Respondent:

You will please take notice that the defendants, The City of Los Angeles, a municipal corporation, The Board of Social Service Commissioners, Department of Social Service, and Dan O. Hoye, City Controller, desire to appeal and have appealed to the Supreme Court of the State of California from that certain judgment in favor of the plaintiff, The Gospel Army, a corporation, and against said defendants, entered by the Clerk of the above entitled court in Book 1346 of Judgments, at page 174 thereof, records of the Superior Court of the County of Los Angeles, California, on or about June 29, 1943.

Defendants hereby request the preparation of reporter's transcript of the testimony offered or taken, the evidence offered or received, and all rulings, acts or statements of the court, also all objections or exceptions of counsel and all matters to which the same relate.

You will further take notice that the appellants, the said defendants, herewith and hereby designate the papers [fol. 24] or records on file or lodged with the clerk which they desire incorporated in the record on appeal, to wit:

1. The judgment roll.
2. The notice of appeal.
3. The notice to prepare clerk's transcript and reporter's transcript.

Dated at Los Angeles, California, July 12, 1943.

Ray L. Chesebro, City Attorney, and Wilbur Bassett, Deputy City Attorney, Attorneys for Appellants.

AFFIDAVIT OF SERVICE BY MAIL

STATE OF CALIFORNIA,
County of Los Angeles, ss:

Maie Litton being first duly sworn, deposes and says:

That she is and was, at all times herein mentioned, a citizen of the United States and a resident of the County of

Los Angeles, over the age of eighteen years and not a party to nor interested in the within action; That her business address is 400 City Hall, City of Los Angeles, County of Los Angeles, State of California;

[fols. 24a-27] That on the 12th day of July 1943, she served the attached notice to Clerk—Appellants Designation of Paper and Records and Notice to Prepare Reporter's Transcript and Clerk's Transcript upon Robert H. Wallis Esq., by depositing a copy thereof, inclosed in a sealed envelope with postage thereon fully prepaid, in the United States postoffice mail box at Los Angeles, California, addressed as follows: Robert H. Wallis Esq., 328 American Avenue, Long Beach, California, and that the person on whom said servuce was made has his office at a place where there is a delivery service by mail, and that there is a regular communication by mail between the place of mailing and the place so addressed.

Maie Litton.

Subscribed and sworn to before me this 12th day of July 1943. Stanley Matthews, Notary Public in and for the county of Los Angeles, State of California. (Seal.)

[File endorsement omitted.]

[fol. 28] IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES

Department 23, Hon. Harold B. Jeffery, Judge Presiding

No. 470,368

THE GOSPEL ARMY, a Corporation, Plaintiff,

vs.

THE CITY OF LOS ANGELES, a Municipal Corporation, the Board of Social Service Commissioners, Department of Social Service, Dan O. Hoye, City Controller, Defendants

Reporter's Transcript

APPEARANCES

For Plaintiff: Robert H. Wallis.

For Defendants: Ray L. Chesebro, City Attorney, by Wilbur Bassett, Deputy.

[fol. 29] Wednesday, March 10, 1943, 9:30 o'clock, A. M.

The Court: All right, you may proceed Mr. Wallis.
Mr. Wallis: Will you take the stand Mr. Patton.

CLARENCE O. PATTON, a witness called by and on behalf of the plaintiff, being first duly sworn, testified as follows:

By the Clerk:

Q. Will you state your name please?
A. Clarence O. Patton.

Direct examination.

By Mr. Wallis:

Q. Mr. Patton, where do you live?
A. 5849 South Broadway.
Q. Do you hold any official position with the Gospel Army?
A. Secretary and Treasurer.
Q. How long have you been Secretary?
A. Since 1930.

Mr. Bassett: The defendant objects to any further testimony given by witnesses or the introduction of testimony in this case on the ground that the complaint does not state a cause of action. On that we would like to be heard, if the Court please.

The Court: Yes, you will be heard, Mr. Bassett.

(Then follows colloquy and argument between Court and counsel.)

The Court: As I read it, it is true that the pleader is [fol. 30] assumed to plead his case in the most favorable manner to him and the pleading should be so construed. I am disposed, however, to overrule your objection, Mr. Bassett, despite the fact that there has been no allegation as to that unreasonableness. The other part that it is alleged that there is some restraint put upon the activities of this particular organization which is duly licensed and chartered—I should say, duly chartered as a corporation, may in itself be a sufficient pleading to the effect that any regulation which might be attempted upon it is unreasonable. For that reason I am going to overrule your objection and we will proceed with the case.

(Thereupon a recess was declared.)

Mr. Wallis: Call Mr. Patton.

CLARENCE O. PATTON, resumes the witness stand for further

Direct examination

By Mr. Wallis:

Q. How long have you been Secretary of this organization?

A. Since 1930.

Q. Have you devoted your entire time as Secretary with the organization?

A. Yes.

Q. What are your duties as Secretary of the Gospel Army, the plaintiff?

[fol. 31] A. Keeping an accurate account of the entire organization.

Q. Did you keep the books and records of the organization?

A. Yes, answered the correspondence, take care of finances.

Q. Has that been the general course of your duties since you were appointed Secretary?

A. Yes, oh no, General Mobley did part of it himself.

Q. You have no other duties other than what you have outlined?

A. No.

Q. Where does the Gospel Army maintain their headquarters?

A. 5849 South Broadway, Los Angeles, California.

Q. Do they have any other office besides that one in Los Angeles?

A. That is their national headquarters. There is no other office except the branch stores.

Q. You have a branch store, do you?

A. And Mission, the industrial department.

Q. What is the industrial department?

A. The industrial department, they collect anything useful to help the Gospel Army in its religious activities.

Q. You say, "useful," you have reference to personal

property, do you?

[fol. 32] A. They collect anything useful.

Mr. Bassett: I object to that as calling for an explanation from his own witness.

The Court: He may answer it. I think Mr. Patton, if you keep your hand down I can hear better.

By Mr. Wallis:

Q. You have reference to personal property, do you Mr. Patton?

A. Clothing, papers and such stuff, furniture.

Q. From whom do you—are these gathered?

A. From the public.

Q. Now, you say they have a Mission?

A. Yes.

Q. And where is the Mission located?

Mr. Bassett: Just a moment, I object to that. I don't want to interfere but the "Mission" has several meanings. They may have a mission and not have the Mission.

The Court: You mean something intrinsic. All right, I will sustain the objection.

By Mr. Wallis:

Q. What is the nature of this Mission, Mr. Patton?

Mr. Bassett: That is objected to on the same ground.

The Court: He may answer.

A. That is for church services.

By Mr. Wallis:

Q. And that is conducted is it and operated by the Gospel Mission?

A. It is.

[fol. 33] Q. Where is that located?

A. 6620 South Broadway.

Q. What religious services do they hold there?

A. Prayer meeting Thursday at 7:30 P. M. Sunday services are 3:00 P. M.

Q. And who has charge of that department of the Gospel Army?

A. Reverend James A. Perigo.

Mr. Bassett: I can't hear anything you say. If you keep your hand down maybe I can hear.

A. Perigo.

By Mr. Wallis:

Q. Who has charge of the industrial department?

A. Mrs. Ruth Colbert.

Q. Now, Mr. Patton, does the Gospel Army have any solicitors or representatives that go out in the field or out in the city of Los Angeles?

A. Yes, we have financial solicitors and also with the industrial department we have what is called salvage solicitors who collect newspapers, clothing and such stuff.

Q. And since you have been Secretary of the Gospel Army, has the Gospel Army always maintained the industrial department and the Mission where services are held and these solicitors?

A. There was times where we had no industrial department but most of the time during my services we have had [fol. 34] an industrial department.

Q. Now, these financial solicitors, how do they operate, from door to door or how?

Mr. Bassett: That is objected to upon the ground that it is hearsay.

The Court: Oh, he is the Secretary.

Mr. Bassett: I think, perhaps, I don't make it clear to the Court. The question is, "how do they operate." He may be the Secretary and not have the least idea except as hearsay as to how they operate. I have no objection to evidence from a person who knows of his own knowledge.

The Court: The objection is overruled at this time. He may answer.

A. Ask the question again please.

(The last question is read by the reporter.)

A. They operate from door to door, yes.

By Mr. Wallis:

Q. During your tenure of office as Secretary have you acted as a solicitor for the Gospel Army?

A. Yes.

Q. On more than one occasion.

A. Before Mr. Hubbard took charge I was a solicitor in connection with my office as Secretary. I earned my own way and contributed to the work of the Gospel Army.

Mr. Bassett: Have the witness take his hand down.

Mr. Wallis: He hasn't the hand in front of his mouth.

The Court: I think you will appreciate the fact Mr. Bas-
[fol. 35] sett may have some difficulty in hearing.

Mr. Wallis: Will you try to talk louder, Mr. Patton?

A. I am talking very loud, it seems to me I should be understood.

The Court: Mr. Patton, I am afraid you can't be the judge of that. Mr. Bassett, if he says he has difficulty in understanding, he is telling us the fact.

By Mr. Wallis:

Q. Try and raise your voice a little louder, Mr. Patton. After all we have to get all the facts in here. Now, Mr. Patton, since you have been Secretary of the Gospel Army, I will ask you if you have received any letters from any of the defendants which are either the Board of Social Service Commissioners, Department of Social Service, or the City Controller's office relative to the Gospel Army?

A. Yes, the Social Service.

Q. And have you talked with anybody in response to those letters in the Social Service and if so, to whom?

A. No, I had no occasion to handle that part of it. It was handled either by General Mobley or Mr. Hubbard.

Mr. Bassett: I move to strike out all the answer except the word "no."

The Court: Motion is granted.

By Mr. Wallis:

Q. Mr. Patton, did I understand you to say the store was located at 9206 South Broadway?

A. Yes.

[fol. 36] (Counsel for plaintiff hands counsel for defendants a pamphlet.)

Q. Mr. Patton, does the Gospel Army have any other activities other than what you have specified, operating the Mission and the salvage store and solicitors?

A. That is all.

Q. And in connection with the financial solicitors, what do they do with the money that they obtain, Mr. Patton?

Mr. Bassett: That is objected to as not the best evidence.

By Mr. Wallis:

Q. If he knows?

Mr. Bassett: He is not the Treasurer.

Mr. Wallis: Yes, he is.

The Court: The objection is overruled.

By Mr. Wallis:

Q. What becomes of the money turned in by these solicitors, Mr. Patton, and to whom is it turned in?

A. It is turned in to me as Secretary and Treasurer of the Gospel Army and it is used for the work of the Gospel Army to carry on its religious activities.

Mr. Bassett: I move to strike all except the first part of the answer, "it is turned in to me," on the ground first it is not responsive and second it is a conclusion of the witness.

The Court: Oh, that is denied.

By Mr. Wallis:

Q. And what are these religious activities that you men- [fol. 37] tioned, Mr. Patton, outline a few of these, will you?

A. Church services, missionary work.

Q. When you say, "missionary work," you have reference to the Mission, do you?

A. No, our solicitors minister the work as they go along wherever they have an opportunity and give out religious tracts. We also give New Testaments to men in the Armed Forces.

Q. How many New Testaments have been given to men in the Armed Forces, if you know?

A. About 300.

Q. Who has paid for those?

A. The Gospel Army.

Q. All right. Where else?

A. That is all at present.

Q. Well, during the time you have been in there what has been the custom of the Gospel Army with reference to

the dispersing of funds they received from these solicitors? Do you do any charitable work?

A. Outside of relief, yes.

Q. That is what I want.

A. We have given temporary aid, temporary aid to the needy, food, lodging and clothing and carfare.

Q. How about any clothing?

The Court: He said, "food, lodging and clothing."

[fol. 38] A. Yes.

By Mr. Wallis:

Q. And that has been the practice and custom of the Gospel Army since you have been Secretary and Treasurer?

A. It has, yes.

Q. Mr. Patton, were you ever connected with the Gospel Army prior to the time you became Secretary and Treasurer?

A. I started the 1st day of January, 1929, as financial solicitor.

Q. And you have personal knowledge do you that these activities which you have outlined have continued from that date down to the present time?

A. Yes, certainly.

Q. Now you said something about tracts and literature, are they furnished free to the public?

A. Those are given out free, yes.

Q. Who pays for the compilation of them?

A. It comes out of the Gospel Army funds.

Q. That is part of these funds that are received on those donations, is it?

A. Yes, it is.

Q. With reference to rent, do you have any rent to pay at your offices?

A. Yes, operating expense, rent and such as that, utilities comes out of the funds.

[fol. 39] Q. As a matter of fact you have devoted your entire time to the Gospel Army, haven't you, since 1929?

A. Yes.

Q. Not engaged in any other occupation or any other work?

A. No.

Q. Mr. Patton, does the Gospel Army have by-laws?

A. Yes.

Q. I hand you a little booklet here and ask you if you have ever seen that before, or one similar to it?

A. Yes, I have. That is the book of by-laws of the Gospel Army.

Mr. Wallis: I would like to have that marked for identification.

Mr. Bassett: I object to the question; and move to strike it.

The Court: It is just offered for identification.

Mr. Wallis: I haven't offered it in evidence.

Mr. Bassett: The objection is, it is not the best evidence even on the question, not to the offer.

Mr. Wallis: How do you know it is not the best evidence?

Mr. Bassett: I know it is not the best evidence, the by-laws you have shown to me, there is no certification there; it is not the original.

Mr. Wallis: I haven't offered it yet.

[fol. 40] The Court: The document has only been offered for identification.

Mr. Bassett: My objection went to the question and the answer.

The Court: It will be overruled. There is nothing prejudicial in this yet. It will be overruled.

Mr. Bassett: Is the objection to the answer expressly overruled?

The Court: Yes. I believe I said for the record it is overruled.

(The pamphlet containing the by-laws of the Gospel Army is marked Plaintiff's Exhibit 1 for Identification.)

By Mr. Wallis:

Q. What is the address of the national headquarters, Mr. Patton?

A. 5849 South Broadway.

Q. And has it always been there?

A. No.

Q. Prior to the location it now has, where was it located?

A. 6405 Bonsallo Avenue.

Q. Was that in Los Angeles?

A. Yes.

Q. Mr. Patton, I show you what has been marked Plaintiff's Exhibit 1 in this case and ask you if you have ever seen that document?

A. No, I don't remember seeing that.

[fol. 41] Q. Have you ever seen one similar to it?

Mr. Bassett: That is objected to as calling for a conclusion of the witness as to whether he has seen one similar to that.

The Court: He may answer.

By Mr. Wallis:

Q. Have you even seen one similar? Pick it up and examine it.

(The document is handed the witness.)

A. I don't understand this question, how do you mean?

Q. I ask you if you have ever seen a copy of this book that has been marked Exhibit 1?

Mr. Bassett: That is objected to, if it is a question of whether he has seen a copy.

Mr. Wallis: It is merely preliminary.

Mr. Bassett: He is asked if he has seen a copy of that book. In the first place it is a leading question. In the second place it asks for a conclusion of the witness on something neither before the witness or Court.

The Court: Overruled. You may answer.

A. I don't understand the question.

Mr. Wallis: I will reframe the question.

Q. Mr. Patton, you have the files and records under your control of the Gospel Army, do you not?

A. Yes.

Q. You have all the literature of the Gospel Army?

A. I do.

[fol. 42] Q. Did you or did you not hand me what has been marked Plaintiff's Exhibit 1 this morning before this case started?

Mr. Bassett: We object to that on the ground it has already been asked and answered. He has been asked if he knows what this is, he says, "no." Now counsel is trying to lead his own witness.

The Court: He may answer it.

A. The question is, did I hand you that?

Q. Yes. I withdraw that question and amend it. Mr. Patton, in the records and files of the Gospel Army do you have the by-laws of the Gospel Army and the constitution?

A. Yes.

Q. Have you got them with you?

A. The new by-laws that was for the Gospel Army hasn't been printed in book form yet and the only thing we have in that respect is a copy, a rough copy, of it, as it is to be printed.

Q. Well, what is this new one, you say, are they amending some of the by-laws?

A. It is a new constitution got up by Mr. L. D. Hubbard and approved of by the Ex-General.

Mr. Bassett: I move to strike that out as immaterial.

The Court: The motion is granted.

By Mr. Wallis:

Q. Do you or do you not have the by-laws of the Gospel Army, Mr. Patton?

[fol. 43] A. I do in the form I told you of.

Q. Did the Gospel Army have any by-laws when you were first elected Secretary?

Mr. Bassett: That is objected to as immaterial.

Mr. Wallis: It is preliminary.

The Court: He may answer.

(Then followed a short colloquy between Court and Counsel as to the number of objections made by Mr. Bassett.)

A. I understand so, to that effect, but I didn't see any book of rules and by-laws.

By Mr. Wallis:

Q. Have you ever seen any Mr. Patton?

Mr. Bassett: That is objected to as asked and answered.

Mr. Wallis: My question was when he first went there.

The Court: The answer, that he understood so, Mr. Wallis. I expected a motion to strike and I can understand probably why it wasn't made at that time. What is the question to which the objection is made now?

(The last question is read by the reporter.)

The Court: You may answer that.

A. No, I have not.

Mr. Wallis: If the Court please, I wonder if I can withdraw Mr. Patton. I want to introduce this before we proceed.

The Court: Just for the purpose of introducing that?

Mr. Wallis: Yes.

The Court: All right.

[fol. 44] Mr. Wallis: Step down, Mr. Patton.

Ruth Colbert, a witness called by and on behalf of the plaintiff, being first duly sworn, testified as follows:

By the Clerk:

Q. State your name, please?

A. Ruth Colbert.

Direct examination.

By Mr. Wallis:

Q. Mrs. Colbert, where do you live?

A. 117 West 90th Street.

Q. What is your business or occupation?

A. My occupation is running the salvage store for the Gospel Army.

Q. How long have you operated it?

A. It will be 6 years in November.

Q. How long have you been associated with the Gospel Army?

A. 6 years in June.

Q. During that time Mrs. Colbert, have you been actively engaged in the Gospel Army?

A. Yes, I have.

Q. And you haven't done any other work except in connection with operating the store?

A. No.

Q. Have you any other duties?

A. I take care of the industrial bookkeeping.

[fol. 45] Q. I will ask you Mrs. Colbert to examine Plaintiff's Exhibit 1 which has been marked for identification in this case, and state whether you have even seen that?

A. Yes, I have.

Q. Where did you see it?

A. It was presented to me when I entered the Gospel Army by our former General.

Q. That one or one similar?

A. One similar.

Q. During your connection have these been distributed?

A. Yes, to every officer or member.

Q. To your knowledge?

A. To my knowledge.

Q. I will ask you to examine this carefully, especially the by-laws here and state whether or not you ever saw the original by-laws and if so—where it mentions the words "by-laws"—have you ever seen the original by-laws?

A. No I have never seen it. I have only seen it in the book.

Q. That was the book that was given to all the——?

A. Yes, sir.

Mr. Wallis: We offer this your Honor.

Mr. Bassett: I would like to know the purpose.

Mr. Wallis: For any purpose.

Mr. Bassett: It hasn't any purpose from our point of [fol. 46] view.

The Court: You are objecting to its admission?

Mr. Bassett: Yes, sir.

The Court: The objection is sustained. We will recess now until 2:00 o'clock. All witnesses are to return at that time.

Wednesday, March 10, 1943.
2:00 O'Clock, P. M.

Clarence O. Patton, resumes the witness stand for further

Direct examination.

By Mr. Wallis: You may take the witness.

Cross-examination.

By Mr. Bassett:

Q. Mr. Patton, what were you doing—engaged in—before you were connected with the Gospel Army?

A. Railroad work.

Q. In what capacity?

A. Telegraph operator and agent.

Q. What railroad?

A. Several.

Q. The last one?

A. M. and St. L.

A. What does that mean, Missouri and St. Louis?

A. Yes.

[fol. 47] Q. Now, have you the corporate books of the plaintiff corporation in your possession?

A. Yes, but not with me.

Q. What do they provide—withdraw that. When you first worked for plaintiff you were soliciting money, were you?

A. Yes, collecting finances.

Q. Yes. And were you at that time paid a salary?

A. No.

Q. Upon what arrangement then did you handle this money? Did you turn all of it into the corporation?

A. Percent.

Q. A percentage; what percentage did you pay to the corporation?

A. 70 percent.

Q. Now, since you have been an officer of the corporation, have you had the books of account?

A. Yes.

Q. And what proportion of the funds brought and delivered to the corporation were on an average used for expenses or on salaries?

Mr. Wallis: We object to that if the Court please, unless it is limited to some particular time and some period.

Mr. Bassett: I have asked him on an average if he knows.

The Court: You are referring to the time since he has [fol. 48] had charge of the books?

Mr. Bassett: Yes, sir, if he knows.

Mr. Wallis: If he knows.

The Court: You may answer that, Mr. Patton.

A. I can't very well strike an average without consulting the books.

By Mr. Bassett:

Q. Very well, referring now to—is there any year for which you can state what proportion of funds received were employed in salaries and expenses?

The Court: Mr. Bassett, for my information, let's make this clear whether you mean the net which came after the collector had taken his or the gross before there was any collector's commission, assuming they call it that.

Mr. Bassett: The understanding was that the words, "received by the corporation" meant received from the solicitors, the net amount, yes, sir.

The Court: All right, Mr. Bassett.

By Mr. Bassett:

Q. Now, the question again, you gave what proportion as to any year?

Mr. Wallis: I am going to object to this on the ground first it is not proper cross examination, it does not tend to prove any issue in this case. If they took 90 percent, what would it prove in this case?

The Court: I think it is material, Mr. Wallis.

A. I would say around 50 percent.

By Mr. Bassett:

[fol. 49] Q. Can you bring the books of account into Court?

A. I can, yes.

Q. Now, when your solicitors are sent out are they given any written identification?

A. They are given a solicitor's certificate.

Q. And who issues that?

A. Issued by the General.

Q. What do you mean by the "General"?

A. The President of the Army.

Q. So you call the President the General?

A. Yes.

Q. And are those delivered—are those in your hands to give to the solicitors or do they get them direct from the General?

A. I have authority to issue them with the consent of the General.

Mr. Bassett: Well, I move to strike that answer as a conclusion of the witness.

The Court: That may remain in the record. It is denied.

By Mr. Bassett:

Q. Are those permits when issued, when signed by the General, issued to you in blank?

A. Yes.

Q. Then you determine who is to have the authority to collect and to whom to give these authorizations, is that so?

[fol. 50] A. Not without permission of the president.

Q. Well, now, let's suppose that you receive a certain executed authorization, do you receive at the same time the name of the person to whom it is to be given?

A. Certainly.

Q. Is that written upon the face of the permit?

A. No, I insert that myself unless—either I or the president can make those certificates, but he generally leaves that to me and it is necessary for me to fill out completely with his signature.

Q. Do you notify him before you issue the certificate?

A. Certainly.

Q. And you wait then until you get an answer from him, do you?

A. I must. That is not, not when he is absent, out of town. When he is absent, of course, it falls to me as secretary to take charge and in issuing cards it would be my discretion.

Mr. Bassett: I move to strike out that answer as a conclusion of the witness and not responsive.

The Court: The motion is denied.

By Mr. Bassett:

Q. Where does the General live?

A. The General at present or the Ex-General?

Q. No, the president, where does he live?

A. Well, he is in the Army and his wife is in charge now.

[fol. 51] Q. What Army?

A. The Armed Forces of the United States.

Q. Then where did he live before that?

A. He lived here in Los Angeles.

Q. In the city?

A. Yes.

Q. I ask you if you have seen this paper before?

A. Similar to that, yes.

Q. No, I am asking you if you have seen that paper before?

A. That one there?

Q. Yes.

A. I don't remember of seeing that particular——

Q. Can you say whether you ever saw it before or not?

A. No, I cannot.

Q. Then when you issue, as you say in the absence of the president, or as you say upon the——

A. I can tell you one thing.

Q. Just a minute. Tell me when I get through with my question. (Continuing) or after you have had instruction to, when you issue the permit do you make any entry upon it to show that you issued it?

A. Yes.

Q. Is there any entry on that to show that you issued it?

A. There is not.

[fol. 52] Q. Now, calling your attention to the same paper, is that the signature, William E. Mobley, of the person to whom you have referred as the President or General?

A. William E. Mobley, he was the Ex-General.

Mr. Bassett: We offer this in evidence, paper headed "The Gospel Army" and appearing to have a name of one "Captain R. Davis" and ask that it be admitted in evidence.

Mr. Wallis: Is that the first one you showed to me?

Mr. Bassett: Yes.

Mr. Wallis: We have no objection, your Honor.

The Court: All right, Defendants' Exhibit "A".

By Mr. Bassett:

Q. We show you another Gospel Army card bearing the name of Herbert Budd and ask you if you ever saw that before? If you know? Do you know Herbert E. Budd?

A. I do not.

Q. Is that the signature of the same person to whom I referred in the last exhibit?

A. It is.

Mr. Bassett: We now offer this in evidence.

Mr. Wallis: No objection.

The Court: Defendants' "B".

By Mr. Bassett:

Q. Now, referring to Defendants' Exhibit "B" I will ask you when that was issued?

Mr. Wallis: We object, if the Court please, he already said he had never seen it before.

The Court: Objection sustained. He said he never saw [fol. 53] it before.

By Mr. Bassett:

Q. Nevertheless, he is the Secretary and he may be able to discover from an examination of it when it was issued.

The Court: If you can determine when it was issued you may answer.

A. No, I do not know when it was issued and from looking at it I could not make any guess.

By Mr. Bassett:

Q. Do you keep a list of the authorized solicitors?

A. I do.

Q. Does the name of Captain Davis appear on that list?

A. It does not.

Q. Does the name of Herbert E. Budd appear on that list?

A. No, not unless it is in the old records, but the old records I can't recall what name is on there unless I examine them and they are not here to examine.

Q. You never heard the names of either of these persons before, did you?

A. I do not remeber of hearing such names.

Q. Did you say that you have or have not a list of solicitors?

A. We keep a record of the solicitors, yes.

Q. Do you have that record?

A. We have that at the office—headquarters.

[fol. 54.] Q. Does that list show when their authority expires?

A. It does

Q. Can you explain then why in Defendants' Exhibits "A" and "B" there is no expiration date appearing on either of them?

Mr. Wallis: We object to that, if the Court please, it is not proper cross examination, also it is argumentative.

The witness has testified he has never seen that exhibit before.

Mr. Bassett: That is not the point of the question at all.

The Court: He may answer it. Will you read it please?

(The last question is read by the reporter.)

A. I would consider it a false card because the Ex-General Mobley, he always put a date on the cards he issued.

By Mr. Bassett:

Q. Who put Herbert——

A. He always put a date on the cards.

Q. I see, but you said these were his signatures, that you recognized them, didn't you?

A. They look like his signatures, yes, I would take them for his signatures.

Q. Will you explain what you mean by a "false card"?

A. I can explain how—well, in the office he generally has a few cards on the desk with his signature already on them in case somebody would come in to solicit, that would save [fol. 55] him writing his name at that time.

Q. At the time he was acting, were you then Secretary?

A. I was.

Q. At that time after he signed a card, did it come to you for issuance or not?

A. No, I didn't issue every card that was supposed to be issued. I told you the General either issued them or I had authority.

Q. If he issued a card, you would not know of it?

A. Not always.

Q. Would you ever?

A. Yes.

Q. How would you find out?

A. By him acquainting me with the fact.

Q. How?

A. By telling me.

Q. And you didn't have any written record from him of these solicitors, did you?

A. He always keeps a record of his solicitors, yes.

Q. That is not the question. I move to strike the answer.

The Court: Strike the answer.

Mr. Bassett: Read him the question.

(The last question is read by the reporter.)

Mr. Wallis: What solicitors do you have reference to, all of them or these two?

[fol. 56] Mr. Bassett: All of the solicitors.

A. We have a record of the solicitors in the Gospel Army, yes.

By Mr. Bassett:

Q. I asked you if you personally had any written record from Mobley during the time that he was acting showing who were solicitors?

A. We have a record of all of the solicitors, yes.

Q. Can't you answer the question as framed, whether you had a record in writing from Mobley at the time that he was the president?

Mr. Wallis: I don't think the question is clear, your Honor. I think he ought to reframe his question.

Mr. Bassett: It is clear if the witness understands it.

The Witness: I don't understand it.

Mr. Bassett: I will withdraw it if he doesn't understand it.

Q. At the time that Mobley was acting as president and issued as you say cards to solicitors, did he then give you in writing any records of the cards which had been issued to solicitors?

A. No, no record in writing.

Q. You say that you had a list of the expiration dates, where did you get that?

Mr. Wallis: If the Court please, now, I am going to make an objection here. As the witness advised this morning, this organization was incorporated in 1905, are you dating [fol. 57] from that date on, or the present solicitors?

Mr. Bassett: I am talking about a specific time during which he was Secretary and Mobley was General or President.

Mr. Wallis: That is covering a large period.

By Mr. Bassett:

Q. How many years was that that Mobley was President and you were Secretary?

A. Well, it is going on 15 years since I first joined up with the Gospel Army.

Q. That isn't the question. The question is, during how many years were you Secretary while he was President?

A. Since 1930.

Q. Is he still President?

A. Who, Mobley, General Mobley?

Q. Yes.

A. No.

Q. Then it is not since 1930. Will you explain when he ceased to be President?

A. March 7, 1942, he died.

Q. Then the period is from '30 to '42. Now during that period when solicitors came to you with money you received the money, didn't you from solicitors?

A. Not always, very seldom.

Q. You were Treasurer, weren't you?

Mr. Wallis: Answer that yes or no.

A. Yes.

By Mr. Bassett:

[fol. 58] Q. Then, who else besides you received money for the corporation when it was brought in by solicitors?

A. General Mobley received it most of the time.

Q. What way had you as Treasurer then of knowing what moneys were being received from solicitors?

A. In receiving money from the solicitors we always gave them a receipt for the amount they turned in and when I came to the office to make up my report and bank the funds I had the receipt book to go by to determine the amount of cash that should be on hand.

Q. The receipt that was given to the solicitor?

Mr. Wallis: He said receipt book.

Mr. Bassett: Did he?

The Court: He said receipt book, Mr. Bassett.

By Mr. Bassett:

Q. Who is L. D. Hubbard in relation to the organization?

A. He was put in as President when General Mobley passed away.

Q. I show you two pages, one on the letterhead of the Gospel Army and ask you if you recognize—if you have seen these before?

A. Yes.

Q. And is that the signature of L. D. Hubbard, would you know?

A. That is not his personal signature.

[fol. 59] Q. It is a rubber stamp, is it?

A. No, it is by me.

Q. You wrote it, yes. Now——

Mr. Wallis: If you want to identify it I will consent it may be offered in evidence, the whole thing.

Mr. Bassett: Thank you.

Q. What was done with this after you had signed Hubbard's name to it?

A. It was given to solicitors.

Mr. Bassett: Now we offer it in evidence.

The Court: Defendants' "C" is a file consisting of two documents. This is a part of a letter, isn't it?

Mr. Bassett: Yes.

The Court: I see.

By Mr. Bassett:

Q. What do you understand by "religious liberty"?

Mr. Wallis: We object to that, if the Court please, asking for a conclusion of the witness.

The Court: Let's see what he alleges.

Mr. Bassett: It is alleged in the complaint and he swore to the complaint.

The Court: Oh, yes, "exercise of religious liberty". Yes, you may answer that Mr. Patton.

A. Religious liberty is free exercises of one's belief in the gospel.

By Mr. Bassett:

Q. And do you think—then did you think that the require-[fol. 60] ment of the ordinance that you—that application be made by the plaintiff to the city of Los Angeles under the ordinance for a license is an interference with religious liberty?

A. Yes.

Q. In what respect is that an interference with religious liberty?

A. You would not be free.

Q. Free to do what?

A. Exercise our liberty.

Q. What is the liberty that is impaired?

A. Our free right to work. We are required to pay for working. It certainly isn't free.

Q. Then you would say that if a man was compelled by law to pay dues to his union that he was not a free man?

Mr. Wallis: We object to that, if the Court please, as calling for a conclusion of the witness and argumentative.

The Court: Sustained.

By Mr. Bassett:

Q. If you were not permitted by ordinance to cross a crossing against the traffic signal, would you consider that was an interference with your liberty?

Mr. Wallis: We object to that. It is not proper cross-examination. It is argumentative and not within the issues in this case.

[fol. 61] The Court: Sustained.

Mr. Bassett: May I suggest in all humility here is a case where this witness over my objection has been allowed to testify that they were engaged in religious work and in religious activities. I objected at the time to it. Your Honor thought he should allow it. I should be allowed to find out what he knows about liberty and he who verified the complaint, what it means.

The Court: He has stated his opinion relative to religious liberty and we may go into that but to draw a comparison between religious liberty and a street crossing and so forth is improper. The objection is well taken, Mr. Bassett.

Mr. Bassett: This is cross-examination.

The Court: I appreciate that but I still sustain the objection.

By Mr. Bassett:

Q. Now, do you consider that the requirement that you pay a tax upon gasoline and a tax upon sales in California interferes with your liberty?

Mr. Wallis: I object to that as calling for a conclusion.

The Court: I believe this line of questioning is objectionable, Mr. Bassett, and sustain the objection.

By Mr. Bassett:

Q. You say that you consider the requirement that you apply to the city of Los Angeles for a permit an abridgment of your liberty, will you state in what respect your liberty [fol. 62] is abridged?

The Court: That is religious liberty.

Mr. Bassett: No he says—I got him away from that. He now says that what he means by liberty, by religious liberty, is the liberty to live the way he wants.

The Court: He said the free right to work, if that is what you are referring to, Mr. Bassett.

Mr. Bassett: Yes, sir.

The Court: However, this answer is in the record now.

Mr. Bassett: Which, that he meant the liberty to work?

The Court: As amended it may be answered.

Mr. Wallis: The Court should take judicial notice we are talking about religious liberty, not anything else.

The Court: This answer makes the question permissible.

Mr. Wallis: Very well, your Honor.

The Witness: Will you state the question again?

(The last question is read by the reporter.)

A. By the necessity of obtaining a permit.

By Mr. Bassett:

Q. Now, during the years that you had been connected with this association was any application made for a permit, any application to the city of Los Angeles made by the plaintiff?

A. Not that I am aware of.

Q. Then the city, nor any instrumentality or commission or bureau thereof has never refused any permit has it, or application?

[fol. 63] Mr. Wallis: If he knows.

A. Not to my knowledge.

By Mr. Bassett:

Q. Now, do these solicitors that go from door to door have any uniform—I notice you wear a uniform hat—do you allow the solicitors to wear a hat too?

A. We are all supposed to wear a uniform, yes and cap, as you see mine there.

Mr. Bassett: That is not what we are asking. The reporter will read it.

(The last question is read by the reporter.)

(No answer.)

By Mr. Bassett:

Q. Did they have anything with them for sale?

A. No.

Q. Where does the outfit get its—gets the goods that are at this salesroom?

Mr. Wallis: We object to the word "outfit."

Mr. Bassett: I will withdraw that.

Mr. Wallis: It is a religious corporation to these people whatever it may be to you but it is to them.

Mr. Bassett: Will you read it?

The Court: Have you substituted any word for "outfit."

Mr. Bassett: The organization. That has not even been proved yet but I assume that it is an organization. Where does the organization get the goods that it sells in its [fol. 64] salvage store?

A. They are donated by the public and collected by the solicitors of the industrial department.

Q. And what payment is made to solicitors for material brought in?

A. I would have to refer that to the industrial department for an answer.

Q. As Secretary and Treasurer, don't you know?

(The witness does not answer.)

Mr. Wallis: We object to the question. It is argumentative. He has already said he would have to refer that to the industrial department for an answer.

The Court: The objection is overruled.

Mr. Wallis: Have you answered that, Mr. Patton?

A. No, I didn't answer it.

By Mr. Bassett:

Q. Did you understand the question?

(The witness does not answer.)

Q. Mr. Patton, did you understand the question?

A. No, I don't understand it.

Mr. Bassett: All right, the reporter will read it.

(The last question is read by the reporter.)

The Court: That is what is paid to industrial solicitors.

A. I would have to refer to the record before I would care to answer such a question.

By Mr. Bassett:

Q. Does your record as Treasurer show?

[fol. 65] A. I have a complete account.

Q. Does your record as Treasurer show what money was paid to solicitors for solicited material brought in?

A. It does.

Q. Are solicitors—do they receive anything?

Mr. Wallis: If the Court please——

The Court: The objection is sustained.

Mr. Bassett: I think it is almost incredible a man Secretary and Treasurer so many years doesn't know.

Mr. Wallis: He has said they have a head of the industrial department.

The Court: It is your observation, Mr. Bassett, you may ask any questions that are permissible, Mr. Bassett.

By Mr. Bassett:

Q. Was there any maximum or minimum as to the reward of solicitors?

The Court: You mean industrial solicitors?

Mr. Bassett: No, sir, they are all one. There is no showing there is two separate solicitors.

The Court: He has referred to industrial solicitors and solicitors.

Mr. Bassett: I didn't understand that.

Q. Are there two classes of solicitors, Mr. Patton?

A. Yes.

Q. Do you have two classes of permits?

A. What do you mean by "permits"?

Q. I mean authorization such as shown in Exhibits "A" [fol. 66] and "B".

A. They all bear the same kind of a solicitation certificate.

Q. Then how do you determine whether a man is an industrial solicitor or a money solicitor?

A. Industrial solicitors are handled by the industrial department and the financial solicitors are handled by headquarters.

Mr. Bassett: I move to strike it out as not responsive.

The Court: Denied, Mr. Bassett.

By Mr. Bassett:

Q. Then, so far as the face of the permit is concerned you have only one class of authorization for solicitors, isn't that so?

A. Yes.

Q. Isn't it a fact that if a financial solicitor failed to get any money that he might—so far as your knowledge of their procedure is concerned—accept personal property if offered?

A. If he did it would be at his own risk and unbeknown to us.

Q. What punishment or responsibility would you attach to such an act?

Mr. Wallis: We object, if the Court please, as something not in evidence, not proper cross-examination.

The Court: Overruled. Perhaps the witness is confused.

[fol. 67] By the Court:

Q. Have you ever known of a financial solicitor taking—when I say "taking" I mean accepting personal property of any kind from anyone for the organization?

A. I don't recall any at present.

By Mr. Bassett:

Q. Is a report made to you as Treasurer or as Secretary from the industrial department showing the goods received and solicitors from whom they are received?

A. By that do you mean a list of the articles received at the industrial department?

Q. A list of the solicitors with the amount credited to them or charged against the organization.

A. In what way?

Q. Money ways.

A. Money collected by the solicitors of the industrial department?

Q. No, I want to know if your records show if John Jones collected certain property and delivered it to the industrial department whether your record shows any credit to him for that work?

A. You mean what they bring in to the industrial department, a list of the articles?

Q. Is that the way he is paid, after they are sold?

A. I don't understand just what you are after.

Q. I am asking you if the solicitor is paid for gathering [fol. 68] whatever he gathers except money at the time that he delivers it to the industrial department, or is he credited on the books, or does he have to wait until it is disposed of?

A. Each truck is in charge of a truck driver who has charge of the operations of that truck and the collectors are under his charge.

Q. The truck drivers appoint those collectors?

A. They are hired by their—hired by the industrial department.

Q. What is that?

A. But the truck driver I think, if I am not mistaken, has authority to get men of his own free will to go out with him on the truck to collect the salvage.

Q. Does he pay them?

A. Yes.

Q. Now as to the truck driver, is he paid a salary or part of the loot or returns?

A. Part of the returns.

Q. What part?

A. That—I object to answer, I don't see as it——

Mr. Bassett: The Court will tell you what to answer.

The Witness: Well, what does the Court say?

The Court: Mr. Patton, you will answer everything unless your attorney objects to it and I sustain the objection or I tell counsel that the question will not be permitted to be

[fol. 69] answered, so until you hear something of that kind you just answer the question.

A. I can't definitely answer it at the present.

By Mr. Bassett:

Q. What do you mean at the present?

A. I mean that I must consult my record before I would give you an answer. Is that clear enough?

Q. I will tell you if it is not clear. Has that amount that has been set been changed from time to time or has it been the same for a long time?

Mr. Wallis: We object to that. He already said he couldn't give any information without his records.

The Court: If you can answer it.

Mr. Bassett: If you can't, say so.

A. I can't.

Q. Is the answer I don't know?

(The witness does not answer.)

Q. When you get a return, financial return, from the industrial department, is that a net return of the amount returned to you as Treasurer or does it set out the expenses and maintenance and costs in detail?

A. It is a complete record of the transaction of the industrial department.

Q. Well, I guess I will have to repeat it.

(The last question is read by the reporter.)

Q. (Continuing.) And reference to that record would show the amount paid or allowed to truck drivers, would it?

[fol. 70] A. Yes.

Q. Now, when you were asked about religious exercise, and so on, you said that there was a mission, where is that?

A. 6620 South Broadway.

Q. And who conducts the service there, if any?

A. Reverend James A. Perigo.

Q. Is he an ordained minister?

A. Yes.

Q. Of what church?

A. The Gospel Army.

Q. Oh. Then he has no ordainment except from whom, the General of the Army?

A. Yes.

Q. Does the Gospel Army maintain any seminary for the education of its ministers?

Mr. Wallis: We object to that, if the Court please, I don't think it is required.

The Court: It may not be essential. The question may be error. However, it may be answered.

Mr. Wallis: The Court knows any church, if properly organized, has the right to ordain ministers.

The Court: Your statement is correct, Mr. Wallis.

By Mr. Bassett:

Q. Answer the question.

Mr. Wallis: Object to it.

Mr. Bassett: The Court has already ruled on it.

The Court: You may answer that question.

[fol. 71] Mr. Wallis: Pardon me.

The Court: Yes, I had, Mr. Wallis. You may answer the question.

A. No.

The Court: You are going to go on for sometime?

Mr. Bassett: Not like the brook, but for a short time.

The Court: We will call the afternoon recess at this time.

(Recess.)

By Mr. Bassett:

Q. Mr. Patton, has there been any interference by the city with the services at your Mission?

A. Not that I know of.

Mr. Bassett: I think that is all.

Redirect examination.

By Mr. Wallis:

Q. Mr. Patton did you have any knowledge of any cards being given to any investigator of the Police Commissioner or the Social Service?

A. There was one card given to a man, I don't remember the name, but I heard afterwards he was an investigator.

Mr. Bassett: Just a moment. I object to anything he heard afterwards. It is hearsay.

Mr. Wallis: Unless he heard it from the Police Commissioner.

[fol. 72] Mr. Bassett: No, I don't care.

The Court: It would make a difference. You will have to lay a foundation. I will sustain the objection. "I don't remember the name", from there on, strike it.

By Mr. Wallis:

Q. Do you know if Mr. Budd is an investigator for the Police Commissioner?

A. No, I don't know.

Q. Of your own knowledge, not what you heard?

A. I heard.

Mr. Bassett: Just a moment.

The Court: Not what you heard, just what you know.

By Mr. Wallis:

Q. Mr. Patton, showing you Exhibits "A" and "B", which are two cards offered by the defendants, are you still using that type of card?

Mr. Bassett: I object to that as immaterial.

The Court: You may answer.

A. No.

By Mr. Wallis:

Q. When did you discontinue using that type of card?

A. It has been several years ago, 3 or 4, something like that.

Q [illegible]out 3 or 4 years?

A [illegible]s near as I remember, yes.

Q. Mr. Patton, do you know of your own knowledge whether any of these cards have been sent to the Social Service?

[fol. 73] A. We send a blank card once a year to the Social Service with our report.

Q. With your report?

A. Yes to show the kind of certificate that was issued to the solicitors.

Q. I show you a red card here, Mr. Patton, and ask you if you have ever seen that card?

A. Yes.

Q. And is that printed by the Gospel Army?

A. Yes.

Q. Is that the type of card that they issue?

A. Yes.

Q. When did you start using that type of card?

A. I can't say definitely it has been a couple of years or so.

Q. A couple of years?

Mr. Wallis: I want to offer it in evidence.

The Court: Is that for identification?

Mr. Wallis: I want to offer it in evidence now.

Mr. Bassett: Well we have no objection if it is offered for identification, but for evidence we object on the ground there is no foundation laid.

The Court: Didn't he make the statement that—has been used for a couple of years?

Mr. Wallis: Yes, your Honor.

The Court: What is the lack of foundation there, Mr. [fol. 74] Bassett?

Mr. Bassett: Well, it doesn't tend to show that such a card was ever issued to anybody or if it was that it has any importance in this proceeding.

The Court: The objection is overruled. It is admitted as the Plaintiff's Exhibit 2.

Mr. Wallis: You may step down, Mr. Patton. Recall Mrs. Colbert.

The Court: You had no more questions after the introduction of those?

Mr. Bassett: No, thank you.

Mr. Wallis: I think I will call Reverend Perigo.

James A. Perigo, a witness called by and on behalf of the plaintiff, being first duly sworn, testified as follows:

By the Clerk:

Q. State your name, please?

A. James A. Perigo.

Direct examination.

By Mr. Wallis:

Q. Where do you live Mr. Perigo?

A. 6609 Denver Ave.

Q. And what is your connection with the Gospel Army, if any?

A. I am the minister of the Mission there, 6620 South Broadway.

Q. How long have you been a minister of the Gospel Army?

[fol. 75] A. Well, I haven't got no definite date but its been about 6 or 7 months, I believe.

Q. 6 or 7 months and did you receive any evidence of your appointment or ordination as a minister from the Gospel Army?

A. Yes, I have been ordained with them in their organization.

Q. You have. Now, state what your duties or your activities are in connection with the Gospel Army, Mr. Perigo?

A. To visit the sick and visit and pray with people. That is my duty regardless of denomination.

Q. Do you hold any services?

A. Yes, sir.

Q. When?

A. Sunday afternoon 3:00 P. M., Thursday evening 7:30.

Q. Do you have a permanent headquarters where people can contact you?

A. They would have to get me through the headquarters of the Gospel Army.

Q. Do you devote your entire time to the Gospel Army?

A. No, I preach in other denominations wherever I may be called.

Q. Now, under your supervision is there any financial help given to the needy?

A. Well, it—s through the headquarters.

[fol. 76] Q. Is it upon your recommendation or do you have any contact between the needy and headquarters?

A. Many times I do myself, direct to the—myself.

Mr. Bassett: That is so vague I don't know what it is he does himself.

The Court: I am a little in the dark myself.

By Mr. Wallis:

Q. What do you have reference to Reverend, some they do and some you do yourself?

A. If it is too small to leave to the Gospel Army I will help and somebody that is really hungry I take them in and give them a meal.

Q. That is into your own home?

A. I mean if I meet somebody that is real hungry I take them in a restaurant and feed them out of my pocket.

Q. Other times you submit it to the Gospel Army and it is taken care of at headquarters, is that correct?

A. That is correct.

Q. What kind of—strike that. The Gospel Army does it have members of the organization?

A. Just the workers.

Mr. Bassett: Just a moment, there has been no testimony as to the Gospel Army, except a corporation, so far.

Mr. Wallis: No testimony of a——

Mr. Bassett: As to the Gospel Army, except a corporation. Are you asking if a corporation has any members?

Mr. Wallis: That is his evidence, it would have to have. [fol. 77] I withdraw the question.

The Court: He has withdrawn it.

Mr. Wallis: That is all then.

Cross-examination.

By Mr. Bassett:

Q. What did you do before you acted for this plaintiff?

A. Before I came into the Gospel Army?

Q. Yes.

A. I used to work in different kinds of work and preached in between times.

Q. What kind of work?

A. I worked for the Southern California Lumber Company at 15th and Alameda for 8 years. I was a panel man there.

Q. Now, you say that you received some authorization in the Army to act as a minister. What kind, if any, qualifications did you present to the Army at the time that this authorization was given you?

A. Is that to me?

Q. Yes.

A. I don't know; I don't get the question.

Mr. Bassett: Read it.

(The last question is read by the reporter.)

A. I don't know what it really means.

Q. Well, Mr. Wallis here calls you Reverend, I believe. I assume that he refers to a qualification of or authority granted you by plaintiff to act as a minister for them.

[fol. 78] Mr. Wallis: He testified he was ordained by them.

Mr. Bassett: I am just trying to define the word "ordained". If you don't mean——

A. Well, I have been ordained.

Q. By whom?

A. By the Gospel Army and anywheres Evangelical Workers.

Q. What is that?

A. Sir?

Q. What is that?

A. They are Evangelical preachers that go to missions to preach wherever there is an opening. Whatever I received, license, local license from the Nazarene Church. They issued them every year when I was with them.

Q. Do you have that license now?

A. No, sir, I am not a member with them.

Q. Now we will get back to the question that I asked you. Perhaps, it will be clearer. At the time you were authorized or ordained, if you want to call it, by the Gospel Army, what qualifications did you present to the Army in that behalf?

Mr. Wallis: We object to it, if the Court please, as assuming something not in evidence, not proper cross-examination. We are not testing the qualifications of this man.

The Court: There has been an allegation by the defendants that they are not a religious organization. I feel that [fol. 79] this is material.

Mr. Wallis: Very well, your Honor.

By Mr. Bassett:

Q. Can't you answer?

A. Well, they never asked me for any. They just—I come into the ordination through recommendation.

Q. Are you paid a regular salary by the Gospel Army?

A. No, sir.

Q. What financial return do you receive for this work?
A. Well, I have the authority to solicit and I give part time that way.
Q. Then when you solicit funds, upon what arrangement or basis are those funds received by you?
A. Under the same order as the others.
Q. Oh, 70 percent to the corporation, is that it?
A. Oh, no, I don't work full time. I just put in just enough to make my expenses.
Q. I see. Then you solicit until you have enough to make your expenses and then stop, is that it?
A. Yes, I just make expenses. I live by faith and that is the way I live.
Q. Do you make a return to the Treasurer of the amount of money that you have solicited and received?
A. No.

Mr. Bassett: I think that is all.
The Court: May I ask a question.

By the Court:

Q. This place where you hold your mission, Reverend [fol. 80] Perigo, is that a rented piece of property that is rented from someone?
A. Yes, sir.
Q. You pays the rent on that?
A. The Gospel Army.
Q. Do you ever remit anything to the Army to cover the rental?
A. No.
Q. There is no part—I want to get this clear in my mind—is there any part of the collections?
A. They don't have collections.
Q. They don't have collections in the Mission at all?
A. Not in the Mission.
Q. Is there any part of the money that you solicit remitted to the Gospel Army to pay the rent of this property?
A. No.
Q. And you told me you didn't pay it yourself?
A. No, sir.

The Court: All right.
Mr. Wallis: That is all.
Mr. Bassett: That is all.

Mr. Wallis: Call Mrs. Colbert. May Mr. Perigo be excused?

The Court: Yes, if you want to.

[fol. 81] RUTH COLBERT, having been previously sworn resumes the witness stand for further

Direct examination.

By Mr. Wallis:

Q. I think you testified this morning Mrs. Colbert that you had charge of the industrial department?

A. Yes, sir.

Q. And had been the head of the industrial department for the past 6 years?

A. That is right.

Q. That is owned and operated is it by the Gospel Army?

A. That is right.

Q. As a branch and part of the Gospel Army?

A. It is.

Q. You have a store you say on South Broadway?

A. That is right, 9206.

Q. And you have trucks do you, that you operate?

A. Yes.

Q. How many trucks are operated?

A. We are operating 4.

Q. What is the function of those trucks?

A. Going through the districts and collecting salvage.

Q. The salvage then is returned and delivered to you?

A. The portion to be sold is returned to the store, the [fol. 82] rest goes directly to the mill.

Q. The part that goes to the store, is that the part that can be salvaged?

A. Yes, sir.

Q. And then reconditioned?

A. Yes, sir.

Q. And placed up for sale?

A. That is right.

Q. What is the nature of the sale, how do you arrive at a price or——

A. Well, a price according to the item, according to the condition of the item.

Q. And that is sold to the general public, is it?

A. That is right.

Q. Now, the articles that cannot be used, such as newspapers and junk, that is sold to junk yards?

A. At the mill.

Q. That money is turned over to you?

A. It is turned over to pay the upkeep of the salvage every day.

Q. What do you pay the operators of the trucks?

A. It is a percentage of what is sold.

Q. To the mill?

A. To the mill.

Q. And they do not participate in anyway in the store?

A. No.

[fol. 83] Q. You heard Mr. Patton's testimony that the truck driver has charge of certain solicitors on that truck?

A. That is correct.

Q. Do all of the people that work on that truck receive the same percentage?

A. They receive less than the driver. I would quote a salary of 50 cents an hour on the solicitors.

Q. That is what it averages?

A. That is what they average.

Q. Where are the solicitors obtained from?

A. They have been steady men for the last 2 or 3 years, the majority of them.

Q. And how often are they paid?

A. Daily.

Q. Then the place that you have your store is a rented place?

A. It is.

Q. Who pays the rent?

A. I pay the rent on it, it comes out of the Gospel Army funds.

Q. In connection with the industrial department, do they do any charity work?

A. Yes, we do.

Q. Have they during the past 6 years?

A. We have, not frequent, it is just at intervals when people need clothing, shoes for their children, anything [fol. 84] of necessity for their working apparel, we see they have it and are not charged for it.

Q. Do people of the store receive a percentage or salary?

A. Salary.

Q. Do you receive a salary?

A. Yes, sir.

Q. Do you devote your entire time?

A. Yes, sir.

Q. After all expenses are taken out, the money is turned over to the Gospel Army?

A. Yes, sir.

Q. I will ask you if you know Miss Spaulding of the Social Service?

A. Yes, sir, I do.

Q. Have you ever had any conversation with her?

A. Not recently; it has been some time ago.

Q. You haven't had any since this suit was filed?

A. No, I haven't.

Q. With reference to the Social Service, did you ever file an application there with them asking for permit on behalf of the Gospel Army?

A. I have.

Q. Was that application ever granted?

A. They granted me a card for 30 days. For each man I brought into the office, it was then and prior. I had [fol. 85] cards for 30 days. At the end of the 30 days I returned the cards to the office to Miss Spaulding with a notation she was to issue me new cards which she did not.

Q. Prior to the filing of the suit, were you visited by anyone from her office?

A. I have been from the Commissioner's office.

Q. Did they make any statement to you?

Mr. Bassett: That is objected to as calling for hearsay.

By Mr. Wallis:

Q. How do you know they were from the Department of Public Service?

Mr. Bassett: That is immaterial too. In other words, the City of Los Angeles is here as a defendant. Now the Department of Social Service is not an organic part at all of the City of Los Angeles. It is merely one of a commission or employee. It is not mentioned in the charter. It is not anybody who can bind the city. It has no control of any funds. It simply is one of the organizations that work there. I assume counsel means we are charged with notice of what somebody in that department may have said. That is purely hearsay as to us.

Mr. Wallis: If counsel will tell me if an employee of the Department of Social Service is not operating under the City Charter I would like to know right now. It is a branch of Los Angeles.

The Court: What if it is. This department, Mr. Bassett, [fol. 86] is it or is it not a department which has charge of investigating these charity organizations or assumed charity organizations?

Mr. Wallis: Under the City Clerk there are various departments that do various things.

Mr. Bassett: Here is an organization again that the City Clerk collects the licenses and he has the moneys and has authorities but this particular duty, you might call it a group of employees that is in Social Service. That is not an organic part of the city.

Mr. Wallis: It is created by ordinance, isn't it?

Mr. Bassett: It is not created by ordinance in the sense it has any rights.

Mr. Wallis: It is so pleaded.

Mr. Bassett: Except to do certain investigations they have no money and no control.

Mr. Wallis: They have certain functions under the City Charter.

Mr. Bassett: Suppose they have?

Mr. Wallis: That is all right if they are interfering with this organization.

Mr. Bassett: They can't bind the city.

The Court: In the pleadings, the defendants' pleadings here there was an admission that is the nature of the Board. What is the last question?

(The last question is read by the reporter.)

[fol. 87] The Court: Any statement that was made would not necessarily be binding on the city in the absence of any showing that it was. Nevertheless, indicating a course of conduct this plaintiff may have followed thereafter, might have been led to believe guaranteed it would be material. You may answer the question.

A. They gave me a citation to appear at the Commissioner's office. They told me I had to appear a certain date that was posted on the citation.

By Mr. Wallis:

Q. Mrs. Colbert, I show you a letter on the letterhead of the Department of Social Service and ask you if you ever received that through the United States mail?

A. Yes, I have.

Mr. Wallis: We offer this, your Honor.

The Court: Plaintiff's Exhibit 3. Letter of August 6th.

Mr. Bassett: What is the purpose of these letters? Perhaps we may agree on it.

Mr. Wallis: We have alleged in our complaint certain interference. We have to prove it.

Mr. Bassett: Now, if you intend to offer those letters, we object on the ground——

Mr. Wallis: I haven't even had them identified as yet, Mr. Bassett.

Mr. Bassett: I am just telling you now so you won't be [fol. 88] surprised.

By Mr. Wallis:

Q. Mrs. Colbert, after you received this letter marked Plaintiff's Exhibit 3, did you file a bond as they required?

A. No, sir, I did not.

Q. As a matter of fact after the letter there was nothing done on your part in connection with it?

A. No, not pertaining to the bond.

Q. I show you a letter from the City Attorney of Los Angeles, Criminal Division, under date of November 21st, 1941, and ask you if you received that through the United States mail?

A. Yes, sir, I have received that.

Q. You received that?

A. Yes, sir.

Mr. Wallis: We wish to offer this letter, your Honor, as our next exhibit in order.

The Court: Plaintiff's Number 4. It is letter of 11-21-41.

By Mr. Wallis:

Q. I show you a letter——

Mr. Bassett: Just a minute. What is that?

Mr. Wallis: What——

Mr. Bassett: What is this you are now talking about?

Mr. Wallis: You saw it.

Mr. Bassett: I didn't see but one letter and you have offered that.

[fol. 89] Mr. Wallis: I handed counsel all the letters and he handed them back to me and said I was going to have a surprise.

Mr. Bassett: If counsel wants those in, they are objected to on the ground they are incompetent, irrelevant and immaterial. There is no objection to the foundation.

The Court: Perhaps they could be received as a file, or can they?

Mr. Wallis: They can be connected and received as one exhibit, part of this Exhibit 4.

The Court: All right, let's see them. On the record now, Mr. Wallis, I notice one of these is dated August 6th, 1940.

Mr. Wallis: Well, counsel has been going away back to 1930.

The Court: You realized one was dated away back. I will receive as a part of Plaintiff's Exhibit 4 the following letters all to Ruth Colbert, August 6th, 1940, City Clerk by Foster R. King; August 28, 1941, Department of Social Service by Ferris Miller, General Manager; September 24th, 1941, addressed to The Gospel Army from the City Attorney's office. Then I am filing chronologically this letter which has formerly been admitted as Plaintiff's Number 4 heretofore, City Attorney's letter of July 14th, 1942, addressed to Ruth Colbert. This all now becomes Plaintiff's Exhibit 4.

[fol. 90] By Mr. Wallis:

Q. Mrs. Colbert, at the time you became connected with the Gospel Army who was the General in charge?

A. General William Mobley.

Q. What was his designation or what was his office with the company?

A. He was just chief, General and Commanding Chief, in other words.

Q. He was the head of the organization?

A. Yes.

Q. Was he the head of the organization during the entire time that you were there?

A. Yes, sir.

Q. Up until the time of his death?

A. That is right.

Q. Now with reference to his successor, who was he?

A. L. D. Hubbard.

Q. Do you know where he is?

A. He is in the United States Army right now.

Q. He is not within the State of California?

A. No.

Q. Mrs. Colbert have you been devoting your entire time to the industrial department of the Gospel Army?

A. Yes, sir, I have.

Q. All your activities have been under the authorization of the Gospel Army?

[fol. 91] A. That is right.

Q. Your department is a branch of the Gospel Army?

A. It is.

Q. Now, are you familiar or do you have any personal knowledge of any charitable work done by the Gospel Army?

A. Well, to aid the needy, if anyone needs clothes or food, yes.

Mr. Bassett: I object the answer is not responsive and too general and vague.

Mr. Wallis: It is an answer, your Honor. I think I am the only one that can object to it.

The Court: I think the answer is permissible. Motion is denied.

By Mr. Wallis:

Q. Does the industrial department have any department that contributes to the needy?

A. Clothing.

Q. That comes out of the industrial fund, does it?

A. Comes out of the industrial fund, yes.

Q. Under your supervision, during the past 6 years, have you personally supervised the distribution of clothing to those in distress?

A. Yes, I have receipts on hands to show they received clothing.

Q. Have you also distributed money?

A. No, outside of carfare to a man to go to town.

Q. Where is the money distributed from to aid the [fol. 92] needy?

A. From the office.

Mr. Bassett: That is objected to as assuming a fact not in evidence.

The Court: She cannot testify, I assume, of her own knowledge. The objection is sustained and the answer stricken.

By Mr. Wallis:

Q. In addition to head of the industrial department what other official position, if any, do you hold with the Gospel Army?

A. I have charge of the bookkeeping.

Q. Anything else?

A. Well, I have the clothing disinfected; I take care of that.

Q. That is in the industrial department?

A. That is in the industrial department.

Q. Do you have any title?

A. Manager.

Q. Are you a director of the corporation?

A. Yes, sir.

Q. As a director do you sit in on the directors' meeting?

A. Yes, sir, I do.

Q. Are you familiar with the functions of the Gospel Army, as has transpired in that meeting?

A. Yes, sir.

By the Court:

Q. When you said you had charge of the books, you meant [fol. 93] for the industrial?

A. Yes, sir.

By Mr. Wallis:

Q. Mrs. Colbert, do you know any literature that is distributed from the Gospel Army?

A. No, sir, other than its tracts.

Q. From the industrial department?

A. No.

Q. Your solicitors do not distribute any?

A. No, we don't.

Q. Now after all expenses and your salary and the salary of the workers on the trucks and the upkeep of the trucks, I take it the upkeep of the truck is part of the expenses?

A. It is, tires and so forth.

Q. Then you remit the net to Mr. Patton?

A. That is right.

Q. Now since this suit was filed, Mrs. Colbert, have you received any letters from the Social Service or any other branch of the City of Los Angeles?

A. No.

Q. Regarding——

Mr. Bassett: That is objected to.

Mr. Wallis: Wait until I finish before you object.

Mr. Bassett: I don't care what it is about.

The Court: He may finish his question, however, Mr. Bassett. Finish your question, Mr. Wallis.

[fol. 94] By Mr. Wallis:

Q. With reference to the matters referred to in Exhibit 4 and which are the letters which were just recently shown to you?

A. I haven't received anything.

The Court: The answer was I haven't.

Mr. Bassett: That is right, all right, if she says that, go ahead.

By Mr. Wallis:

Q. Mrs. Colbert, as a director of the Gospel Army, the plaintiff in this action, do you know of any other activities they have other than has been testified here?

A. No, sir, I do not.

Q. And during your connection with the Gospel Army have you had any other activity than what has been testified to?

A. No, sir.

Q. Prior to the filing of this action do you have any personal knowledge of anyone from the Social Service or any other branch of the Service interfering with the collection of salvage articles?

Mr. Bassett: That is objected to as too vague, "anything."

The Court: It is preliminar.

Mr. Bassett: If she would answer "yes" or "no" I wouldn't object to it.

Mr. Wallis: It is hard to simmer down.

[fol. 95] By the Court:

Q. Was there such occasion or occasions?

A. Yes, we had been stopped.

The Court: Just stop there.

By Mr. Wallis:

Q. You had been?
A. Yes.

The Court: The answer was "yes" and we will strike all other parts of the answer and the next question.

Mr. Wallis: That is all, Mrs. Colbert.

The Court: I see no prejudice if we hold this cross-examination until tomorrow.

Mr. Bassett: Tomorrow, yes, sir.

The Court: Continued tomorrow at 9:30.

Mr. Bassett: Mr. Wallis has been kind enough to say that as to these ordinances mentioned in the answer he makes no objection.

The Court: Those will be received as Defendants' next in order.

[fol. 96] Thursday, March 11th, 1943. 9:30 O'Clock, A. M.

The Court: All right, we can proceed in this.

Ruth Colbert, having been previously sworn, resumes the witness stand and testifies as follows:

Cross-examination.

By Mr. Bassett:

Q. Mrs. Colbert, what portion of the moneys received by your truck drivers from the sale of mill material or mill sales, as you call it, I believe, is returned to you?
A. What portion?
Q. Yes.
A. There is only 10 per cent and that is turned over to headquarters.
Q. And of the 90 per cent received by them then do they pay the employees, the solicitors, the laborers?
A. Yes, sir.
Q. Now, Mrs. Colbert, are you a widow?
A. Yes, I am.
Q. You mean your husband is not living?
A. He is living but we are separated.

Q. Then you are not a widow?
A. I am by divorce.

Mr. Wallis: Grass Widow.

A. Grass Widow, yes.

By Mr. Bassett:

Q. Your former husband is engaged in the same business, [fol. 97] is he not?
A. To my knowledge he is not with the same organization.
Q. What organization, if you know?
A. Emanuel Christian Workers.
Q. Now, is any detailed report made to you from persons to whom material is sold as to the amount paid by them to your truckmen?
A. Yes, they admit to me every night when they come in of how much they paid the men.

Mr. Bassett: Read the question again.

(The last question is read by the reporter.)

A. Yes.

The Court: I don't understand, do you mean the mills?
Mr. Bassett: Exactly. Persons to whom they sell, isn't it clear, a report by persons to whom they sell.
The Court: There might be individuals to whom material is sold also.
Mr. Bassett: Any person to whom they sell.
The Court: You are referring to truck drivers?
Mr. Bassett: Truck drivers.
The Court: Not to the store itself?
The Witness: The answer is yes.

By Mr. Bassett:

Q. You have those statements?
A. Yes, sir.
Q. Now, who was the successor to Mobley?
[fol. 98] A. L. D. Hubbard.
Q. L. D. Hubbard?
A. Yes, sir.

Mr. Bassett: That is all.
Mr. Wallis: That is all. We rest, your Honor.

MOTION FOR NON-SUIT.

Mr. Bassett: Defendant now moves for non-suit upon the ground that, and for dismissal, upon the ground that the plaintiff has not made out a cause of action and upon the grounds heretofore stated in support of the demurrer to the evidence at the opening of this cause and further that it does, has not appeared that the plaintiff has no relief at law or that the plaintiff would upon the facts alleged or upon the facts proved suffer irreparable injury.

The Court: That motion is denied.

Mr. Bassett: May we have a stipulation that the ordinances referred to in Paragraph III of the amended answer to the complaint and those portions of the Charter therein referred to may be deemed to have been introduced by reference.

Mr. Wallis: That was my understanding, yes.

The Court: Incidentally, I have not read these ordinances yet but I will get around to that. Those you introduced in evidence yesterday, I haven't read those yet.

Mr. Bassett: I have a witness who was to be here before this. He is just across the street.

[fol. 99] The Court: We can take a recess.

Mr. Wallis: You can call him.

Mr. Bassett: Yes, I will call him. As to the main ordinance, that is in the Code.

The Court: That is admitted by reference. That is actually introduced. That would be Defendants' "E" by reference.

(Recess.)

FERRIS MILLER, a witness called by and on behalf of the defendants, being first duly sworn, testified as follows:

By the Clerk:

Q. State your name, please?
A. Ferris Miller.

Direct examination.

By Mr. Bassett:

Q. Mr. Miller, what is your office or association in connection with the City of Los Angeles?

A. You mean my department? The Social Service Department of the City of Los Angeles.

Q. What office do you bear in that department?

A. The manager and Secretary.

Q. I invite your attention now to Plaintiff's Exhibit [fol. 100] 4 and ask you if you were the head of that department at the time that these letters variously dated August to December, August of '40 to February '42, as they appear, if you were head of the department at that time?

A. Yes, I was.

Q. As such head have you had contact with the persons operating and acting as the Gospel Army in the city?

A. Yes.

Q. Will you explain to the Court what requests and demands were made by your department upon the Gospel Army?

Mr. Wallis: We object to that if it is by letter or word of mouth.

The Court: He may answer it.

A. The department asked the Gospel Army to comply with the solicitation.

The Court: Now, I will stop you, Mr. Miller. You can lay a better foundation than that Mr. Bassett.

Mr. Bassett: Yes.

Q. Inviting your attention to the letter of August 28th in this exhibit will you state what portion of the ordinance of the City of Los Angeles is there referred to?

A. Referring to the services of the person who was permitting the solicitation for the Gospel Army which at that time was Mrs. Ruth Colbert. Our action was asking her to apply for and receive a license as the person permitting this solicitation.

[fol. 101] Q. And that license is upon what character of business?

A. Well, the permission of a solicitation for a charitable purpose.

Q. Did you have any personal contact at that time with persons representing the Army?

A. Not at that time, but previous to that time.

Q. Could you state where and with whom you had contact previous to that time?

Mr. Wallis: The time.

By Mr. Bassett:

Q. When and with whom, I should say.

A. Well, I had contact with Mrs. Colbert and also with the commanding officer of the organization, Mr. Mobley.

Q. About when?

A. Well, it was just prior to the issuance of this letter, perhaps, a matter of a few weeks. I notice one letter was dated August 6th, and then I wrote another on the 28th, calling attention to the first letter.

Q. This conversation took place in your office?

A. Yes.

Q. Will you state what was the subject of it, what was said?

A. Well, as I recall it, I asked Mrs. Colbert to file an application for the license and one of my assistants also had a conversation with her regarding that same subject.

By Mr. Wallis:

Q. Were you present?

A. Yes, I was present at that particular time.

[fol. 102] Q. Yes, but you were not present when one of your assistants talked to her?

A. Yes, I was at one time, one of those conversations.

By Mr. Bassett:

Q. Has your department ever denied any applications to the Gospel Army for leave to conduct its business?

Mr. Wallis: We object to that, if the Court please.

Mr. Bassett: Very well, I will withdraw it.

Q. Has your department at any time denied any application of the Gospel Army for license or permission to conduct salvage operations for charitable purposes?

A. No, I think not.

Mr. Wallis: Well, now if the Court please, we ask that the answer go out as not a positive answer, he thinks not. Unless he knows he should not say.

Mr. Bassett: That is subject to cross-examination.

The Court: The objection, I believe, is well taken, Mr. Bassett, therefore, plaintiff's motion is granted.

Mr. Wallis: Strike it.
The Court: It will be stricken.

By Mr. Bassett:

Q. Do you know whether or not any application of the Gospel Army for any permit from the city has ever been denied during the period when you were at the head of this department?

A. No, it has not been denied.

Q. In your conversations with Mrs. Colbert or the de-
[fol. 103] ceased General or anyone else acting in behalf of the Gospel Army, was there any requirement or demand made by you in regard to any religious activities of this organization?

A. No, the religious aspect was not discussed with Mrs. Colbert. We were not interested in that.

Q. Was it discussed with the General? I refer now to the president of the corporation.

A. Well, only to this extent, that we always assured General Mobley that we were not interested in the religious activities as they were not under our jurisdiction.

Q. Yes. Then the only jurisdiction discussed as between you and the General or the head of this salvage department was as to their operations for charitable purposes, is that it?

A. That is true.

Mr. Bassett: Take the witness.

Cross-examination.

By Mr. Wallis:

Q. Mr. Miller, as head of the Social Service you keep a file on every organization such as this, do you?

A. Yes.

Q. That file is here in court, is it not?

A. That I do not know.

Q. Will you step down and check the file with Mr. Bassett and see?

[fol. 104] A. O. K.

Mr. Wallis: It is here isn't it, Mr. Bassett?
Mr. Bassett: You designate what you want.

Mr. Wallis: I want the file on this organization of the Social Service.

Mr. Bassett: Well, we will see.

Mr. Wallis: That is the one.

Mr. Bassett: Apparently you are already acquainted with it.

Mr. Wallis: I am acquainted with it. I have been over there several times.

The Court: Do you know whether or not it is the record?

Mr. Bassett: This is something handed to me by some one in the department. This is the head of the department. I want him to look for it.

Mr. Wallis: Is that all in the folder?

Mr. Bassett: That is all that has to do with the Gospel Army.

Mr. Wallis: Will you instruct counsel to let me see the folder?

The Court: Mr. Wallis, you are not entitled to go through private papers of the city.

Mr. Wallis: It is a public record.

The Court: The matter pertaining to the Gospel Army is not.

[fol. 105] By Mr. Wallis:

Q. Will you look at it and see if there is anything else in the folder?

A. This is the file.

By the Court:

Q. Mr. Miller, you have some papers in your hand.

A. This is a part of the department file.

Q. Is there some more here?

A. I assume there is, I am not sure.

Q. Will you look and see?

A. Yes, that appears to be part of the file.

Mr. Bassett: If Mr. Wallis will state what he wants to prove or find, perhaps, we can admit it.

Mr. Wallis: I just wanted to find out how many applications had been filed by the Gospel Army.

Mr. Bassett: Why not ask the witness then.

By Mr. Wallis:

Q. Mr. Miller, how long have you been head of the Social Service?

A. About 7 years.

Q. And do you recall approximately the time you talked to Mrs. Colbert in your office?

A. Oh, I imagine it has been a year and a half ago, probably. I talked with her a number of times in the office.

Q. Was General Mobley always with her when you talked to her?

A. No.

Q. You are confident you told both these people you were [fol. 106] not interested in their religious activities but only as a matter of collecting for charity?

A. Yes, I have explained that to them numerous times.

Q. In your experience in Social Service is charity considered a religious activity or not?

A. I don't get that.

Q. From your experience in Social Service is charity considered a religious activity or not?

A. Well, the ordinance differentiates between the two.

Q. By reason of the ordinance then you would say that charity was not a religious activity, is that correct?

Mr. Bassett: Just a moment, that is objected to. It it not up to him. He is an officer of the city who is carrying out the ordinance. It is immaterial what he personally thinks.

The Court: He has had a discussion with these people. He may answer.

A. I have always pointed out to Mr. Mobley and to others in this organization with whom I have talked that our jurisdiction did not extend to his religious activities. It is true that religious organizations do charitable work and it is up to the jurisdiction, even some of the churches do that work. They solicit outside of their own walls.

By Mr. Wallis:

Q. That has been your practice that any religious organization must first obtain a permit from Social Service before [fol. 107] they can solicit for charity?

A. That is right.

Q. You know, do you not, Mr. Miller, that the Gospel Army from your investigation and information that came

to you was an established religious organization, did you not?

Mr. Bassett: We object to that as a conclusion of the witness.

Mr. Wallis: I asked from his investigation.

The Court: Mr. Wallis, assume that is answered yes or no, it is not going prove or disprove anything here.

Mr. Wallis: No, that is true. I said from his investigation.

The Court: That still does not determine anything for us. Objection is sustained.

By Mr. Wallis:

Q. Mr. Miller, has there ever been application of the Gospel Army granted to solicit for charity?

A. Yes, there has been.

Q. Do you know on what date?

A. That was some years ago, before I became manager.

Q. On what do you base your testimony in your answer to that question, from any record or——

A. Well at one time the solicitors did have information cards from the department. That was probably a matter of 10 years ago or more. That was before my time.

Q. That was before the present ordinance went into effect? [fol. 108] A. Well, before some of the amendments were in effect yes.

Q. And had any permit been granted or issued during the last 10 years to the Gospel Army to solicit for charity that you know of?

A. No, I think not.

Q. Now, in the event an organization such as the Gospel Army does not file an application and obtain a permit, what action does the Social Service take?

A. Well, could I explain my answer?

Mr. Bassett: Yes, explain it.

A. We first require that the organization file a notice of intention to solicit. Then if there is in the arrangement some thing which indicates that a person has been employed to conduct that solicitation for pay then an additional application must be made for a license to conduct such solicitation. That is what we have asked Mrs. Colbert to file which has not been filed.

By Mr. Wallis:

Q. She, as you know, has been soliciting salvage, personal property?

A. Yes.

Q. With reference to their financial solicitors, what action has the Social Service taken with reference to those, where solicitors go out on the street and solicit money?

A. That solicitation is conducted for a religious purpose [fol. 109] and is not in our jurisdiction. The men that appear on the streets with uniforms, with tambourcens.

Q. It has not been the practice of the Social Service to in any way disturb or hinder them?

A. That is right.

Q. The notice of intention which Mrs. Colbert filed on behalf of the Gospel Army with reference to salvage, personal property, do you know of any reason other than what you testified here why that application was not granted?

A. Well, for the reason that the other application was not filed covering the appointment of a person for pay to conduct solicitation.

Q. It wasn't because she or the organization failed to post a bond, was it?

A. That was one reason; that would be one of the requirements. It is my belief Mrs. Colbert would have complied with this ordinance if it had not been for the position of her superiors. They were more opposed to it than she was, Mr. Wallis. Mr. Mobley and I think, Mr. Patton, at one time stated they did not see the thing our way and did not want to make the application. I don't recall Mrs. Colbert ever refused. She just never did, that's all.

Q. Do you have any knowledge of any charges being filed against her with the City Attorney's office, Criminal Department?

Mr. Bassett: We object to that as hearsay.

[fol. 110] The Court: He may answer.

A. Mr. Wallis, I don't think any charges were filed. The procedure of our office is if the matter comes to a point, we come to an empasse, we refer it to the City Attorney by way of citation. People are called in and they come. It is by way of accommodation. I was not present at that conference so I don't know what went on. That is a matter of our usual procedure which we have followed for years.

By Mr. Wallis:

Q. Mr. Miller, who passes on the matter of whether an organization is soliciting donations as a religious activity or as a charitable or promotional affair?

A. The notice of intention that is filed by the organization itself shows that the solicitation is charitable otherwise it would not be filed.

Q. Who passes on it, the Commission?

A. The Commission has the final word on that.

Q. It is up to the Commission to say yes or no, isn't it?

A. Yes, that is within their power.

Q. Isn't it a fact the posting of the bond—in other words, your attitude with reference to this salvage store and the collection of salvaged personal property has been that Mrs. Colbert is in the category of a promoter, is that right?

[fol. 111] A. That is right.

Q. And that she must have a license from the city to operate the store?

A. Yes.

Q. And also post a bond?

A. Yes.

Q. And how much of a bond?

A. The license is $25.00 per annum, and the surety bond is for $2000.00.

Q. And then she has to also—a report has to be made to your Social Service, does it?

A. Annually of receipts and expenditures.

Q. And also your Social Service directs how the receipts shall be applied, is that correct?

A. Well, only that they shall be applied to a charitable purpose. The details of the matter we leave to the organization.

Q. If any portion of the funds from the salvage went for religious purposes, would the Commission have any objection to that?

A. If it were for religious as distinguished from charitable?

Q. You draw a line between charitable and religious?

A. Yes, but if I might be able to make the statement, in my conversations with Mr. Mobley he never made any denial that he was conducting a charitable organization.

[fol. 112] He always maintained he was, that he was feeding the poor and keeping people in his garage and his own home contributing to their comfort.

Q. And furnishing them with food and clothing?

A. That is right. That is why I insisted it was a charitable enterprise, by his own admission.

Q. Do you draw that decision by reason of your own personal opinion or by reason of the ordinance?

A. By reason of his own statement.

Q. You say you concluded that was a charitable organization?

Mr. Bassett: We object. It has been answered.

The Court: The same question was asked and answered, Mr. Wallis.

A. Yes, that was my conclusion after my investigation.

By Mr. Wallis:

Q. Are you able, Mr. Miller, to state what has been the practice of the Social Service as to what is religious activities?

Mr. Bassett: I object to that. It is immaterial in the trial of this case what others——

The Court: I believe so.

Mr. Wallis: It is very important, your Honor.

The Court: Why is it, Mr. Wallis?

Mr. Wallis: Our contention is that the collection of salvaged personal property and the reconditioning of it and selling it in a store operated by the Gospel Army is a part of [fol. 113] their religious activity. Now Mr. Miller has just stated that Mr. Mobley admitted to them they helped the poor and needy and furnish lodgings for them and clothing. Now I want to obtain from the witness who is testifying here that they differentiate between charitable and religious organizations. I would like to see how he arrived at it.

The Court: Will you read it?

(The last question is read by the reporter.)

The Court: The objection is sustained.

By Mr. Wallis:

Q. Now, the only application that you have personal knowledge of having been granted was about 10 years ago, is that correct?

A. Yes, about that time.

Q. Now what did you mean when you testified, Mr. Miller, that there has never been any application denied since you had been head of the Social Service?

A. Application denied?

Q. Yes.

A. Why I don't recall that an application to solicit was denied. The only denial that I remember was an application for the exemption from the business license which the City Clerk issued. The Commission did not approve because they did not feel enough charitable work was being done to justify it.

Q. The final outcome of that meeting was they should [fol. 114] pay a license?

A. Yes either pay a license or qualify as a charitable organization and be exempt.

Q. Do you know whether they ever filed an application for an exempt license?

A. I believe they did.

Q. And that was denied, wasn't it?

A. That was filed with the City Clerk. The procedure is that the City Clerk refers it to the Social Service Department for approval.

Q. Your finding was they were not entitled to exemption?

A. That was the finding of the Board, not myself.

Q. The findings of the Board of Social Service was that they were not entitled to a free license?

A. We didn't establish their status as a charitable organization.

Q. I am not asking you that.

A. Perhaps I misunderstood your question.

Q. I am asking you if it was not the finding of the Board that this organization was not entitled to exemption from the license fee?

A. That is right.

Q. Isn't it a fact that the Board—withdraw that question.

The Witness: I can explain it for you if you want me [fol. 115] too.

The Court: Yes, go ahead and explain it, Mr. Miller.

A. The contract between Mrs. Colbert and the Gospel Army provided that they were to get 10 per cent of the gross collections and the Board did not feel a 10 per cent charity was entitled to an exempt license.

By the Court:

Q. Is there a license that exempts them from paying anything? They are the same type except one costs money?

A. Yes, a charitable organization making a proper showing may apply to the City Clerk and obtain a license without paying the fee. Those are referred to our department, however, for approval. Upon our approval or disapproval it is granted.

By Mr. Wallis:

Q. That is under the license ordinances not solicitation?

The Court: Do I have that ordinance too?

Mr. Bassett: Yes.

By the Court:

Q. Is there any fixed set of rules that show the department whether they qualify for the exempt license or pay license, or is that a matter of discretion on your part? When I say "your", the Commission.

A. The Commission has established a regulation which is not a part of the ordinance, but according to the City Attorney's opinion they are entitled to establish certain regulations and they have said a charity shall apply at least [fol. 116] 50 per cent of the income to charitable purposes. Of every dollar 50 cents should go to the charitable cause and not eaten up in expenses.

By the Court:

Q. So far—I may be reaching out a little bit from the material matter here. Nevertheless, I feel that the question is not entirely out of order—so far as the public is concerned, is there any requirement for the posting of a sign or notice so that the public is aware whether the charity with whom they are dealing is an exempt charity or not exempt? In other words, the charity with whom they deal is a 50 per cent net charity or a 10 per cent net charity?

A. Yes, the ordinance provides that each solicitor must carry with him an information card which is issued by our department upon the results of our investigation and we put the salient facts on that card.

Q. When you say "salient" it would include whether it is a pay license or exempt license on that card, is that showing given?

A. No, sir, it does not.

Q. Does it show what proportion of the moneys are devoted to expense?

A. Yes, upon the card it would show the percentage of the gross proceeds that are applied to charity or were applied during the last year to give the donor an idea whether it is a legitimate enterprise or not.

[fol. 117] Q. The $2000.00 bond is not included in the license?

A. No. It is licensing them to conduct a paying campaign.

Q. To whom does that bond run?

A. To the City of Los Angeles.

Q. To what purpose?

A. To secure the faithful performance of their contract, defalcations and so forth, quite similar to the bonds brokers are required to file.

Mr. Bassett: That, your Honor, is conditioned as required in the ordinance.

The Court: I was asking things that might be shown.

Mr. Bassett: I didn't want the Court to think that that was a bond cooked up by the Commission.

The Court: The only thing the Commission requires so far as fixing the regulation has to do solely with their distribution of the half, that the 50 per cent net should go back before an organization is entitled to it. Excuse me, Mr. Wallis, you may proceed.

Mr. Wallis: That is all right.

Q. Mr. Miller, following out what you testified to, in other words, anyone that has a solicitor, say a church having a solicitor go out and collect money, if they have an arrangement to give the solicitor 60 per cent, then that solicitor would have to file a bond?

A. You say a church solicitor?

[fol. 118] Q. Like this organization.

Mr. Bassett: We object to that on the ground there are two sorts of solicitors here.

The Court: Are you referring to the money solicitors?

Mr. Wallis: I wanted to get down to the license exemption. From his testimony I assumed that they arrived at that where regular financial solicitors go out, if the solicitors

only turns in 40 per cent to the church, they would not be exempt from the license.

The Court: That was not my understanding.

By Mr. Wallis:

Q. Do you understand the question?

A. You have mentioned a church solicitor. We have no interest in church solicitors.

Q. No matter whether the church gets 10 per cent or not?

A. Not for religious purposes only for charity purposes.

Q. Suppose Mr. Mobley said the money went to feed and clothe the needy; if the church used the money for the same purpose you would have no objection?

Mr. Bassett: That is immaterial whether they have any objection or not. This is cross-examination. There is specific testimony which shows their actions have to do only with this second hand shop. Now he is trying to go into another field. It is unfair to this witness to go into a field in which he says he doesn't have any jurisdiction.

(The last question is read by the reporter.)

Mr. Bassett: He has said his department does not act [fol. 119] in that field.

The Court: I don't quite understand the question.

Mr. Wallis: I will reframe it.

Q. Mr. Miller, suppose the Gospel Army, that their financial solicitors, that is the people that go out on the streets and solicit cash donations, those solicitors turned into the church 10 per cent and kept 90 per cent, would you have any objection?

A. I have no jurisdiction.

Q. Suppose the church with the 10 per cent they received devoted the entire amount to the furnishing of clothing, food and lodging to the needy, then would you have any objection?

A. No, I would not have any objection. The ordinance refers to the solicitation and not the purpose for which it is eventually used.

Q. Suppose the store operated under the name of the Gospel Army gathered up this salvaged personal property and sold it in their store after they reconditioned it and gave the Gospel Army headquarters 10 per cent and they used that 10 per cent for charitable purposes, would you object?

A. If it was solicited on the basis of a charitable intention.

Q. Suppose it was solicited only under the name of the Gospel Army?

Mr. Bassett: That is objected to. You cannot assume [fol. 120] a fact not in evidence.

The Court: He may answer.

A. Well, the merchandise is solicited under the representation it does go for a charitable purpose.

By Mr. Wallis:

Q. How do you know?

A. I have had them call at my own home.

Q. And did they have any credentials with them?

A. Yes, they had a credential signed by Mr. Mobley.

Q. How long ago has that been?

A. That has been a couple of years ago. It was while this matter was still under discussion.

Q. While it was boiling?

A. Yes.

Q. Was that before the suit was filed?

A. Yes. There has never been any denial they were soliciting for a charitable purpose but they said they did not admit our jurisdiction.

Q. They said they considered the charitable part of their religious activities?

A. They did, but my point is my ordinances differentiate between the two.

Q. And that is the stand the Commission has taken?

A. That is right.

Q. There has been no interference or demand made by the Social Service of the Plaintiff or any of the agents or officials of the Gospel Army since this suit was filed has [fol. 121] there, Mr. Miller?

A. No, I don't think so.

Mr. Wallis: That is all. Oh, just a minute I did want to ask one other question.

Q. Do you know Mr. Budd, Mr. Miller?

A. No, I don't recall his name.

Q. Have you ever heard of him?

A. Budd?

Q. Yes.
A. No, I don't know him.
Q. Is he an investigator out of your department?
A. No.
Q. Have you had any conversation with him as an investigator out of the Police Commissioner?
A. No, I don't know him at all.
Q. How about Mr. Davis?
A. No, I don't know.

Mr. Bassett: That is objected to unless you give his initials.

Mr. Wallis: He knows what I am talking about.

Mr. Bassett: Who are you talking about, I would like to know.

The Witness: I would say I have no knowledge of what you two are talking about.

Mr. Wallis: That is all.

Mr. Bassett: That is all. Defendants rest.

[fol. 122] Mr. Wallis: No rebuttal, your Honor.

The Court: Do you people want to talk about this, argue it? If so, I will be glad to listen to you or you may submit it without argument.

Mr. Wallis: I am willing to submit it without argument. I think we have argued it enough on the demurrer. The Court has heard the evidence.

Mr. Bassett: I think we prefer to argue it.

The Court: All right.

Mr. Wallis: I will reserve the right to answer counsel go ahead.

Mr. Bassett: We waive any argument.

The Court: Mr. Wallis, do you want to say anything?

Mr. Wallis: No. It is just a matter, as I see it, it is a question whether it is an arbitrary rule.

The Court: All right, the case is then submitted.

[fol. 123] Reporter's Certificate to foregoing transcript omitted in printing.

[fol. 124] STIPULATION

We hereby stipulate that the foregoing transcript is a full, true and fair transcript of the proceedings had at the trial, the testimony offered or taken, oral evidence offered or re-

ceived, actions and statements of the Court, also all objections and exceptions of counsel and matters to which the same relate.

——— ———, Attorney for Plaintiff. Ray L. Chesebro, City Attorney, By Wilbur Bassett, Deputy, Attorney for Defendants.

[fol. 125] CLERK'S CERTIFICATE

Notice of settling record on appeal having been mailed to the attorneys and no request for correction of transcript having been filed, and the time for said filing having expired, pursuant to rule 8(a) I hereby certify the foregoing record consisting of 94 pages to be a full, true and fair transcript on appeal.

Dated August 23, 1943.

J. F. Moroney, County Clerk, By G. G. Dunn, Deputy.

[fol. 126] IN THE SUPREME COURT OF CALIFORNIA, IN BANK

2nd Civ. No. 14276 (L.A. 18,808)

GOSPEL ARMY

v.

CITY OF LOS ANGELES

ORDER TRANSFERRING CAUSE—Filed March 9, 1944

The above entitled cause, now pending in the District Court of Appeal of the Second Appellate District, Division Two, is transferred to the Supreme Court.

Gibson, Chief Justice.

Dated March 9, 1944.

[File endorsement omitted.]

[fol. 127] IN SUPREME COURT OF CALIFORNIA

OPINION OF THE COURT—Filed November 20, 1945

TRAYNOR, J.

Certain ordinances of the City of Los Angeles regulate transactions in secondhand goods and solicitations for charitable purposes. Plaintiff, an incorporated religious organization, brought this suit to enjoin the enforcement of these ordinances as applied to it on the ground they abridged its religious liberty in violation of the Constitution of the United States and the Constitution of California. The trial court found that plaintiff is "engaged exclusively in the promulgation, by literature and word of mouth, of its religious beliefs, by and through its auxiliaries, and in the procuring of donations in the form of money and articles of value in the prosecution and furtherance of its religious activities." It enjoined defendants from "further interference and threatened acts, which would in any way prevent the free exercise of the religious liberty and freedom of worship of the said Plaintiff." Defendants appeal.

The finding of the trial court must be viewed in the light of the evidence, which is undisputed. Religious services at plaintiff's mission are conducted by a minister ordained by it whose compensation depends entirely on solicited contributions. Plaintiff engages in missionary work, distributes the New Testament and religious tracts free to the [fol. 128] public, and gives assistance to those in need. It collects salvage from the public to obtain funds to propagate its religious doctrines and to provide aid to the poor. Some of the salvage is sold in a secondhand goods store operated by plaintiff; some, such as clothing, is distributed to the poor; goods not suitable for further use go directly to a salvage mill. The salvage is collected by plaintiff's "industrial solicitors" in four of plaintiff's trucks. The money received from the sale of secondhand goods in plaintiff's store is used to meet the cost of operating the store, including the compensation paid to the manager and the solicitors. Whatever remains is paid into plaintiff's treasury. Ninety per cent of the money received for the mill material goes to the drivers of the trucks; the remainder is turned over to the manager of the store for plaintiff's treasury.

Other employees of plaintiff solicit money from the public. Solicitors make the object of their mission known by showing to prospective donors a printed card stating that "the bearer whose signature is hereon attached for identification is duly authorized to solicit money, food, clothing or any other useful articles that will help the Gospel Army to carry on their religious home missionary and evangelical work among the poor and under-privileged." About fifty per cent of the funds raised is absorbed by the cost of soliciting, including the compensation of the solicitors, which is [fol. 129] paid on a percentage basis. The funds remaining are used to pay the cost of furnishing tracts and religious literature free to the public and to supply food, lodging, clothing and car fare to the poor.

Section 24.01 of the Los Angeles Municipal Code defines a "junk dealer" as "a person having a fixed place of business in this City who goes from house to house or from place to place, gathering, collecting, buying, selling or otherwise dealing in any old rags, sacks, bottles, cans, paper, metal or other articles commonly known as "junk." A "secondhand dealer" is "a person engaging in, conducting, managing, or carrying on the business of buying, selling or otherwise dealing in secondhand goods, wares or merchandise." Junk dealers and secondhand dealers must obtain a permit to engage in business from defendant city's Board of Police Commissioners. The following "Requisites of Permits" are set forth in subsection (c) of Section 24.01: "(1) Persons desiring to obtain a permit to conduct, manage or deal in any business mentioned in subsection 'a' of this Section shall file an application in writing with the Board specifying by street and number the place where such business is proposed to be conducted or carried on; junk collectors having no fixed place of business shall specify in such application their residence by street number. The application shall be signed by the applicant and shall contain his residence address. (2) Before receiving an applica- [fol. 130] tion for any permit the Board shall require the payment of such fees as are hereafter specified. (3) Upon receipt of such application the Board shall cause to be investigated the business of the applicant and location at which applicant proposes to engage in business as specified in said application. Thereafter the Board may issue a permit to the applicant which shall be effective for the remain-

ing portion of the current year. (4) Persons operating under the provisions of this Section shall be required to secure an annual renewal of such permit commencing January 1st of the succeeding year in which such permit was granted. (5) No person holding a permit to conduct, manage, carry on or deal in any business mentioned in subsection 'a' of this Section shall buy, sell or otherwise deal in secondhand jewelry, previous stones, precious metals (including old gold), watches or other similar secondhand merchandise without first applying for and receiving a special permit therefor from the Board in the manner provided in this Section for securing ordinary permits." The fees prescribed are set forth in subsection (d): "(1) Applications for permits other than provided for in this subsection shall pay the sum provided in Section 22.10; (2) Applications for special permits, the sum of $50.00; (3) Applications for annual permit renewal, the sum of $25.00; (4) applications for changing location of place of business for which a permit has been granted, the sum of $10.00; [fol. 131] (5) Change of ownership, the sum of $10.00, to be applicable only in cases where the new owner is already operating under a permit issued pursuant to provisions of this Section." Subsection (e) provides: "(1) The Board shall not grant any permit provided for in this Section to persons who fail, refuse or neglect to comply with the laws and ordinances relating to and regulating the business for which such permit is sought. (2) Persons applying for or obtaining permits under the provisions of this Section shall comply with the provisions of this Section." Subsection (f) provides for the revocation of permits: "Any permit issued under the provisions of this Section may be revoked or suspended upon the grounds provided for in this Section: (1) • • • If persons holding permits under the provisions of this Section shall violate any of the provisions of this Section or any provisions of any other ordinance or any law relating to or regulating any such business, or shall conduct or carry on such business in an unlawful manner, the Board, in addition to any other penalties provided by this Code, shall revoke such permit issued to such person; (2) • • • Permits granted pursuant to this Section shall be revoked only in the manner provided in Section 22.02 of this Code; (3) • • • No permit shall be granted to any person to conduct, manage, carry on or deal in any

business mentioned in subsection 'a' of this Section whose permit has been revoked by the Board until six (6) months have elapsed after such revocation." Holders of permits [fol. 132] must keep a complete record of all goods purchased or received by them, which is open to inspection by any member of the police department. They must also file with the Chief of Police daily reports on prescribed forms of the goods purchased or received during the preceding day, describing the article and specifying the hour of the day when it was acquired, the name and address of the party from whom it was acquired, the height, age, sex, complexion, and other characteristics of that person. The hours of business are prescribed. Secondhand dealers must keep the articles received by them 21 days before selling them. The period prescribed for junk dealers is three days. With respect to certain articles classed as scrap, junk dealers are exempted from the provisions requiring the keeping of records, the filing of reports, and the keeping of articles for three days. There are comparable exemptions for secondhand dealers. If a claim is made that property in the hands of the holder of a permit is stolen, the board, in the event no court action is pending, may determine whether or not the property was stolen from the claimant and order its return if it was. If such an order is disobeyed, the board may revoke the permit. The foregoing provisions are reasonable, and the standards prescribed are adequate. (In re Holmes, 187 Cal. 640, 646 (203 P. 398); Co-operative Junk Co. v. Board of Police Commissioners, 38 Cal. App. 676, 679 (177 P. 308); Zemansky v. Board of Police Commission-[fol. 133] ers, 61 Cal. App. 2d 450, 453-455 (143 P. 2d 361); see 30 A. L. R. 1427; 88 A. L. R. 970, 972; 7 Cal. Jur. 10 yr. Supp. 366; 33 Am. Jur. 336-339, 355; 47 Am. Jur. 555).

Regulation of the business of junk dealers and secondhand dealers is designed to protect the public interest by preventing such dealers from becoming outlets for stolen goods. No question arises as to the constitutionality of such regulation when the business regulated is not carried on by a religious organization. (Lewis v. Quinn, 217 Cal. 410, 413 (19 P. 2d 236); In re Holmes, supra; Co-operative Junk Co. v. Board of Police Commissioners, supra; Zemansky v. Board of Police Commissioners, supra; see 30 A. L. R. 1427; 88 A. L. R. 970, 972; 7 Cal. Jur. 10-yr. Supp. 366; 33 Am. Jur. 336-339, 355; 47 Am. Jur. 554). Business carried on by a religious organization cannot be differentiated, for

the reasons set forth below with respect to the validity of the regulation of plaintiff's solicitation of funds for charity.

Sections 44.01 to 44.19 of the Los Angeles Municipal Code regulate solicitations of funds for charity. The term "charitable" includes "Philanthropic, social service, benevolent, patriotic, either actual or purported." The term "contribution" includes "alms, food, clothing, money, property or donations under the guise of a loan of money or property." (#44.01.) Certain provisions, applicable to solicitors or charitable contributions in general, are designed primarily to secure information that will assist the public in judging [fol. 134] the nature and worthiness of the cause for which the solicitation is made and to insure the presentation of such information to prospective donors. We find nothing unduly burdensome or unreasonable in any of these provisions. Section 44.05, which is quoted in the margin,[1] re-

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[1] "No person shall solicit, nor shall any officers or member of any association authorize any person to solicit, any contribution for any charitable purpose unless, within the fiscal year of the City in which such solicitation is made and at least within ten (10) days prior to the beginning of such solicitation, there shall have been filed with the Department, on a form furnished by said Department, by such person or association upon whose behalf the solicitation is made, written Notice of Intention to solicit such contribution, which notice shall contain complete information as follows:

"(a) The purpose of the solicitation and use of the contribution to be solicited;

"(b) A specific statement, supported by reasons and, if available, figures, showing the need for the contribution proposed to be solicited;

"(c) The character of such solicitation and how it will be made or conducted;

"(d) The expenses of the solicitation, including salaries and other items, if any, regardless of from what funds such expenses are payable;

"(e) What portion of the contributions collected as a result of the solicitation will remain available for application to the specific purposes declared in the Notice of Intention as the object of the soficitation;

[fol. 135] quires any person who solicits for any charitable purpose to file with the Department of Social Service a notice of intention to solicit ten days before the solicitation. This notice must contain, among other things, information regarding the purpose, character, method, and estimated expenses of the solicitation, the need for the contribution to be solicited, the proposed use of the solicited funds, the amount that will remain available for charitable purposes over expenses, the amount received from solicitations in the preceding calendar year, the expenses of such solicitations, and the amount that remained available for charitable purposes. The department may investigate the statements in the notice of intention. (#44.03(a).) Information cards setting forth the facts in the notice of intention and such other facts as in the opinion of the Board of Social Service Commissioners will be of assistance to the public in determining the nature and worthiness of the solicitation (Sec-

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"(f) A specific statement of all contributions collected or received by such person or association within the calendar year immediately preceding the filing of such Notice of Intention. The expenditure or use made of such contributions, together with the names and addresses of all persons or associations receiving salaries, wages, compensation, commissions or emoluments from such contributions, and the respective amounts thereof;

"(g) The names and addresses of the officers and directors of any such association for which the solicitation is proposed to be made;

"(h) A copy of the resolution, if any, of any such association authorizing such solicitation, certified to as a true and correct copy of the original of such resolution by the officer of such association having charge of the records thereof;

"(i) A statement that the signers of such Notice have read and are familiar with the provisions of this Article and will require all solicitors engaged in such solicitation to read and be familiar with all sections of this Article prior to making any such solicitation."

tion 44.06 quoted in the margin+) are issued by the Department of Social Services for four cents per card. (#44.03 (e).) The information cards, which are in effect permits [fol. 136] to solicit, are issued automatically upon the filing of the required information and the payment of the four cents for each card. The department is given no authority to withhold such cards when these requirements are met, and we cannot assume that it will abuse its authority in order to withhold them. As this court said in In re Holmes, 187 Cal. 640, 647 (203 P. 398), quoting from In re Flaherty, 105 Cal. 558, 562 (38 P. 981, 27 L. R. A. 529) and Gaylord v. City of Pasadena, 175 Cal. 433, 437 (166 P. 348): " 'Laws are not made upon the theory of the total depravity of those who are elected to administer them; and the presumption is that municipal officers will not use these small powers villainously or for purposes of oppression or mischief.' If

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+ "There shall be filed with the Department with such Notice of Intention a statement of any agreement made with any agent, solicitor, promoter, manager or conductor of such solicitation, together with a copy of each agreement which may be in writing. Within twenty-four hours after any change in any such agreement or the making of any new or further agreement, a true copy of such change or agreement, if in writing, or if not, written details thereof shall be filed with the Department. Whenever, in the opinion of the Board, the Notice of Intention filed with the Department does not disclose sufficient information for the public concerning the facts hereinabove required to be stated in such Notice or concerning the person or association making such solicitation or on whose behalf such solicitation is made, then, upon the request of said Department, there shall be filed, in writing, within forty-eight (48) hours after such request, such additional information as may be required by said Board upon the foregoing subjects. Provided, however, that the Board, for good cause, may extend the time for filing such additional information. The Notice of Intention and such additional information, if requested, shall be signed by such person intending to make such solicitation, or if by or on any association, by at least two officers of such association and shall be open to the inspection of the public."

this petitioner had applied for a permit under the requirement of the section of the charter above quoted, and been either whimsically or arbitrarily refused such permit, he might then, as is shown in Gaylord v. City of Pasadena, supra, have had recourse to the courts for relief from such [fol. 137] unjust and arbitrary action."

Each solicitor must exhibit an info-mation card to the prospective donor and must not make any misstatements. A solicitor must also carry written authorization from the association that he represents. The board may recall the cards and amend them if it receives additional information showing that any statements thereon are incorrect. The board may not disallow a proposed solicitation but it may investigate the statements in the notice of intention and the methods of making or conducting the solicitation; it may inspect the records of the person in charge of the solicitation and the association for whom it is made, and it may give such publicity to its findings as it deems best to reach the general public and persons interested. The association for whom the solicitation is made must maintain an accounting system recording the entry of all donations and disbursements. (#44.08.)

More restrictive provisions are applicable to promoters. A promoter is "any person who for pecuniary compensation or consideration received, or to be received, solicits or is [fol. 138] engaged in the business of or holds himself out to the public as engaged in the business of soliciting contributions for or on behalf of any other person or any charitable association, corporation or institution, or conducts, manages or carries on * * * any drive or campaign for any such purpose; provided, however, that pecuniary compensation or consideration as used herein, shall include, but shall not be limited to, participation on a percentage basis in any fund solicited, or raised, for or on behalf of any other person, firm, association or corporation; provided, further, that no person who is a bona fide paid officer or employee of a social service agency endorsed by the Board of Social Service Commissioners, shall be considered a promotoer within the meaning of this article." (#44.01.) The conditions that a social agency must meet to be endorsed by the Social Service Commission and the standards that govern the commission are set forth in a separate ordinance, the

relevant part of which is quoted in the margin.[2] In our [fol. 139] opinion the classification effected by this ordinance is reasonable and the standards provided are adequate.

[fol. 140] A promotoer must apply for a promoter's license. The application must set forth the applicant's qualifications and show that he is of good character and reputation. Per- [fol. 141] sons working as solicitors for compensation under the promoter must be registered as solicitors. The board grants a promoter's license if it is satisfied that the applicant is of good characer and reputation, is equal to the financial responsibility incident to the proposed solicitation and intends to conduct his business as promoter fairly and honestly. Similarly, before registering a solicitor, the board must be satisfied of his good character and reputation. A license fee of $25 is required for a promoter's license. A promoter must also file a $2,000 bond with the board to insure contributors against loss through theft. Solicitors must file a $500 bond and pay a registration fee of $1.00. The board may revoke a promoter's license, after a hearing, for any "unfair, unjust, inequitable or fraudulent" act of a promoter or his employees, or agents in making a solicitation or conducting the business of promoter. Any ground that would have led to denial of the license is also ground for its revocation.

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[2] "Sec. 2. Said Commission shall have power:

"1. To investigate, when requested or permitted, by the officers or persons in charge thereof all charitable or philanthropic corporations or associations dependent upon public appeal or general solicitations for support, and submit quarterly, in writing, the result of such investigation to the Council.

"2. To endorse such of said charitable corporations or associations as shall apply to said Commission for endorsement and prove to the Commission that they have complied with the following provisions, namely:

"(a) That the title to any real property in the City of Los Angeles owned by such charitable corporation or association is vested in the name of said charity, if it be a corporation, or else in the name or names of a responsible trustee, or trustees under a declaration of trust or other

Solicitations upon premises owned or occupied by the association upon whose behalf the solicitation is made, and the soliciting of funds solely from members of the soliciting association are not subject to the provisions concerning promoters and solicitors or to certain other regulatory provisions of the ordinance. "Solicitations made solely for evangelical missionary or religious purposes" are also exempted. If, however, they are conducted in such [fol. 142] a manner as in the opinion of the board may give the persons solicited or the public the impression that the purpose of the solicitation is in whole or in part charitable, the board may investigate the matter and give such publicity to its findings as it may deem best to advise the public of the facts. (Sec. 44.16.)

Plaintiff contends that since the practice of charity and the solicitation of funds for that purpose are part of its religious duties, the ordinances regulating the solicitation of charitable contributions cannot apply to plaintiff's solicitations without abridging its religious liberty in violation of the Constitution of the United States and the Constitution of California.

Religious liberty "embraces two concepts,—freedom to believe and freedom to act. The first is absolute but, in the nature of things, the second cannot be." (Cantwell v. State of Connecticut, 310 U. S. 296, 303 (60 S. Ct. 900, 84 L. Ed.

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written instrument, setting forth the rights of such charitable corporation or association therein, and recorded in the records of the County Recorder of Los Angeles County.

"(b) That the declared purpose for which such a corporation or association is organized are charitable or philanthropic, and not for the pecuniary profit of the members or associates thereof or any of them.

"(c) That for three months prior to its endorsement said charitable corporation or association has faithfully complied with the following provisions with reference to its accounts, namely: All funds received by it and all disbursements made by it, have been entered upon the books of its treasurer or other financial officer, receipts have been given or tendered for all money or other property donated to it, whenever required by law or ordinance; all expenditures other than petty cash to a reasonable amount have been made by checks signed by at least two officers of such

1213, 128 A. L. R. 1352.) The constitutional guarantee protects the profession of a religious belief by word of mouth or in writing, the dissemination of the doctrines of a religious organization by preaching from the pulpits or other methods of evangelism, or the right to refuse to state beliefs against the dictates of one's conscience. (Murdock v. Pennsylvania, 319 U. S. 105, 109 (63 S. Ct. 870, 891, 87 L. Ed. 1292, 146 A. L. R. 81); West Virginia v. Barnette, 319 U. S. 624, 642 (63 S. Ct. 1178, 87 L. Ed. 1628, 147 A. L. R. 674).) [fol. 143] "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion, or force citizens to confess by word of mouth or act their faith therein." (West Virginia v. Barnette, 319 U. S. 624, 642 (63 S. Ct. 1178, 87 L. Ed. 1628, 147 A. L. R. 674).) It does not follow, however, that religious organizations enjoy unlimited freedom in carrying on all activities related to their religious program. As the United States Supreme Court declared in Murdock v. Pennsylvania, 319 U. S. 105, 109-110 (63 S. Ct. 870, 891, 87 L. Ed. 1292, 146 A. L. R. 81): "we do not intimate or suggest * * * that any conduct can be made a religious rite and by the zeal of the practitioners swept into the First Amendment. Reynolds v. United States, 98 U. S. 145, 161-167,

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corporation or association; that the bank book of such association or corporation has been balanced and reconciled with the books of account at reasonable intervals.

"(d) That no moneys of said corporation or association are on loan directly or indirectly to any officer, director, trustee or employee thereof, and that the corporation or association for a period of three months prior to its endorsement has not invested any moneys constituting part of its permanent endowment funds except in securities legal as investments for savings banks within the State of California, and has not paid out more than 15% of any amounts collected by solicitation within the City of Los Angeles for expenses of solicitation, and has not diverted funds donated to it from any source to purposes other than those for which they were donated.

"Privided, however, that the provisions of this paragraph shall not apply to any loan or investment that has been made prior to the passage of this ordinance.

25 L. Ed. 244, and Davis v. Beason, 133 U. S. 333, 10 S. Ct. 299, 33 L. Ed. 637, denied any such claim to the practice of polygamy and bigamy. Other claims may well arise which deserve the same fate. We only hold that spreading one's religious beliefs or preaching the Gospel through distribution of religious literature and through personal visitations is an age-old type of evangelism with as high a claim to constitutional protection as the more orthodox types."

Many activities prompted by religious motives can hardly be differentiated from secular activities. If the applicability of government regulation turned on the religious mo- [fol. 144] tivation of activities, plausible motivations would multiply and in the end vitiate any regulation. "Civil liberties, as guaranteed by the Constitution, imply the existence of an organized society maintaining public order without which liberty itself would be lost is the excesses of unrestrained abuses. . . . Where a restriction of the use of highways . . . is designated to promote the public convenience in the interest of all, it cannot be disregarded by the attempted exercise of some civil right which in other circumstances would be entitled to protection. One would not be justified in ignoring the familiar red traffic light because he thought it his religious duty to disobey the mu-

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"(e) That the work for which such corporation or association has been organized has been faithfully performed.

"(f) That the by-laws and other written rules and regulations of such corporation or association define the powers and duties of the officers of such corporation or association, and that a copy of the Articles of Incorporation of said charity, if it be a corporation, and a copy of the By-Laws and other written rules and regulations of such corporation or association have been filed with the Social Service Commission.

"(g) That within three months prior to its endorsement such a corporation or association has not violated any law or ordinance applicable to it.

"(h) That the officers and employees of such corporation or association are persons of good moral character and reputation and that the corporation or association has exercised reasonable care in selecting persons of good moral character and reasonable experience as solicitors for its funds.

nicipal command or sought by that means to direct public attention to an announcement of his opinions." (Cox v. New Hampshire, 312 U. S. 569, 574 (61 S. Ct. 762, 85 L. Ed. 1049, 133 A. L. R. 1396).) In Prince v. Massachusetts, 321 U. S. 158 (64 S. Ct. 438, 88 L. Ed. 645), it was contended that religious liberty was abridged by the application of a statute regulating child labor to a guardian who permitted her minor ward to distribute religious literature on the streets at night. In vindicating the state's power to regulate in this way the dissemination of religious beliefs, the court declared: "The parent's conflict with the state over the control of the child and his training is serious enough when only secular matters are concerned. It becomes the more so when an element of religious conviction enters. Against these sacred private interests, basic in [fol. 145] a democracy, stand the interests of society to protect the welfare of children, and the state's assertion of authority to that end, made here in a manner conceded valid if only secular things were involved. The last is no mere corporate concern of official authority. It is the interest of youth itself, and of the whole community, that children be both safeguarded from abuses and given opportunities for growing into free and independent well-developed men and citizens. Between contrary pulls of such weight, the safest and most objective recourse is to the lines already marked out, not precisely but for guides, in narrowing the no man's land where this battle has gone on . . . the family itself is not beyond regulation in the

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"Said Commission shall issue said endorsement to any such corporation or association as shall comply with the aforesaid requirements. Said endorsement shall be valid for such time as shall be fixed by the Commission but not exceeding one year from date of its issuance.

"Said Commission shall report to the Council upon request by it the name of any corporation or association which is endorsed or has been refused endorsement by it, with a general statement of the reasons for its refusal.

"Said Commission shall also have power to request any endorsed corporation or association to make application for a new endorsement at or after the end of each fiscal year or at an earlier period if the Commission shall deem such requirement advisable, and if said corporation or association shall not do so its endorsement shall be withdrawn."

public interest, as against a claim of religious liberty. Reynolds v. United States, 98 U. S. 145, 25 L. Ed. 244; Davis v. Beason, 133 U. S. 333, 10 S. Ct. 299, 33 L. Ed. 637. And neither rights of religion nor rights of parenthood are beyond limitation. Acting to guard the general interests in youth's well being, the state as parens patriae may restrict the parent's control by requiring school attendance, regulating or prohibiting the child's labor and in many other ways. Its authority is not nullified merely because the parent grounds his claim to control the child's course of conduct on religion or conscience. . . . It is sufficient to show what indeed appellant hardly disputes, that the state has a wide range of power for limiting parental freedom and authority [fol. 146] in things affecting the child's welfare; and that this includes, to some extent, matters of conscience and religious conviction."

Activities characteristic of the secular life of the community may properly be a concern of the community even though they are carried on by a religious organization. (See, Prince v. Massachusetts, 321 U. S. 158, 165 (64 S. Ct. 438, 88 L. Ed. 645); United States v. Ballard, 322 U. S. 78, 87 (64 S. Ct. 882, 88 L. Ed. 1148); Murdock v. Pennsylvania, 319 U. S. 105, 109 (63 S. Ct. 870, 891, 87 L. Ed. 1292, 146 A. L. R. 81); Chaplinsky v. New Hampshire, 315 U. S. 568, 571 (62 S. Ct. 766, 86 L. Ed. 1031); Cox v. New Hampshire, 312 U. S. 569, 574 (61 S. Ct. 762, 85 L. Ed. 1049, 133 A. L. R. 1396); Davis v Beacon, 133 U. S. 333, 342 (10 S. Ct. 299, 33 L. Ed. 637); In re Dart, 172 Cal. 47, 56 (155 P. 63, Ann. Cas. 1917D 1127, L. R. A. 1916D 905); Chrisman v. Culinary Workers' etc., 46 Cal. App. 2d 129, 132 (115 P. 2d 553); People v. Pierson, 176 N. Y. 201 (68 N. E. 243, 98 Am. St. Rep. 666, 63 L. R. A. 187); City of St. Louis v. Hellscher, 295 Mo. 293 (242 S. W. 652); Commonwealth v. Childs, 299 Mass. 367 (12 N. E. 2d 814); Commonwealth v. Green, 268 Mass. 585 (168 N. E. 101); Commonwealth v. Plaisted, 148 Mass. 375 (19 N. E. 224, 12 Am. St. Rep. 566, 2 L. R. A. 142); State v. White, 64 N. H. 48 (5 A. 828); Stull v. Reber, 215 Pa. 156 (64 A. 419, 7 Ann. Cas. 915); Matter of Frezee, 63 Mich. 396, 405 (30 N. W. 72, 6 Am. St. Rep. 310); State v. Chenoweth, 163 Ind. 94, 99 (71 N. E. 197); see, also, Zollman, Religious Liberty in the American Law, 17 Mich. L. [fol. 147] Rev. 355, 456). Religious organizations engage in various activities such as founding colonies, operating libraries, schools, wineries, hospitals, farms, industrial and

other commercial enterprises. Conceivably, they may engage in virtually any worldly activity, but it does not follow that they may do so as specially privileged groups, free of the regulations that others must observe. If they were given such freedom, the direct consequence of their activities would be a diminution of the state's power to protect the public health and safety and the general welfare. With that power so easily diminished there would soon cease to be that separation of church and state underlying the constitutional concept of religious liberty. (See Evans v. Selma Union High School Dist., 193 Cal. 54 (222 P. 801, 31 A. L. R. 1121); Knowlton v. Baumhover, 182 Iowa 691 (166 N. W. 202, 5 A. L. R. 841); People ex rel. Ring v. Board of Education, 245 Ill. 334 (92 N. E. 251, 19 Ann. Cas. 220, 29 L. R. A. N. 442); Board of Education of Cincinnati v. Minor, 23 Ohio St. 211 (13 Am. Rep. 233); Donahoe v. Richards, 38 Me. 379 (61 Am. Dec. 256).)

There is no doubt that plaintiff, like many religious organizations, regards the practice of charity as a religious duty. It is not exclusively a religious activity, however; many charitable activities spring from sources of the everyday life of the community unrelated to religion. The state itself has an active responsibility for the welfare of the poor, the aged, the sick, the unemployed, and the orphaned. [fol 148] There is a public interest in regulating the solicitation of funds for these purposes. The very worthiness of such purposes creates a risk that the charitable impulses of people may be taken advantage of by solicitors who would collect funds under false pretenses or retain for themselves an undue percentage of what they collected. Fraud in the solicitation of charitable contributions can be most effectively controlled by measures such as the regulation in question requiring the presentation of information to enable the public to determine the nature and worthiness of the purpose for which the solicitation is made, and requiring proof of the good character and reputation of paid solicitors. In the words of Mr. Justice Shaw, speaking for a majority of the court in In re Dart, 172 Cal. 47, 56 (155 P. 63, Ann. Cas. 1917D 1127, L. R. A. 1916D 905): "The occupation of soliciting contributions to charitable purposes is clearly so far subject to the police power, that it may be regulated by laws or ordinances providing for a reasonable supervision over the persons engaged therein, and for the application and use of the contributions

received to the purposes intended, in order to prevent unscrupulous persons from obtaining money, or other things, under the pretense that they were to be applied to charity, and to prevent the wrongful diversion of such funds to other uses, or to secure them against waste. Measures reasonably tending to secure these ends are unquestion-
[fol. 149] ably valid." (See cases collected in 57 A. L. R. 516, 128 A. L. R. 1361.)

The religious organization in Cantwell v. Connecticut, supra, on which plaintiff relies, solicited funds, not for charitable purposes but for its own support. Under the statute there involved it was allowed to engage in such solicitation only if the licensing officer determined that its cause was a religious one and issued a certificate to that effect. It was held that the vesting of this power in an administrative official amounted to "censorship of religion as the means of determining its right to survive" since under the statute the official's judgment was decisive as to what constituted a religious cause. The ordinance involved in the present case specifically exempts solicitations for religious purposes only; its object is to regulate all solicitations for charitable purposes. The Board of Social Service Commissioners has no authority to appraise the nature or worthiness of a religious cause. In the Cantwell case the court recognized that even the solicitation of funds for the support of a religious organization is subject to reasonable regulation: "The general regulation, in the public interest, of solicitation, which does not involve any religious test and does not unreasonably obstruct or delay the collection of funds, is not open to any constitutional objection, even though the collection be for a religious purpose. Such regulation would not constitute a prohibited previous [fol. 150] restraint on the free exercise of religion or interpose an inadmissible obstacle to its exercise." (310 U. S. 296, 305.) Thomas v. Collins, — U. S. — (65 S. Ct. 315, Adv. Opn., 89 L. Ed. 340, 89 L. Ed. —), cited in support of plaintiff's contentions, "does not involve the solicitation of funds or property." (65 S. Ct. 315, 324.) The court there held that a state could not constitutionally require a paid union organizer to register with the Secretary of State before making a public speech inviting a nonunion worker specifically and nonunion workers in the audience generally to join the union. "We think a requirement that one must register before he undertakes to make a

public speech to enlist support for a lawful movement is quite incompatible with the requirements of the First Amendment." (65 S. Ct. 315, 327.) The court was careful, however, to distinguish cases in which the speaker solicits funds from the public: "Once the speaker goes further, however, and engages in conduct which amounts to more than the right of free discussion comprehends, as when he undertakes the collection of funds or securing subscriptions, he enters a realm where a reasonable registration or identification requirement may be imposed. In that context such solicitation would be quite different from the solicitation involved here. It would be free speech plus conduct, akin to the activities which were present, and which, it was said the State might regulate, in Schneider v. Irvington, supra, 308 U. S. 147, 84 L. Ed. 155, 60 S. Ct. [fol. 151] 146, and Cantwell v. Connecticut, 310 U. S. 296, 84 L. Ed. 1213, 60 S. Ct. 900, 128 A. L. R. 1352, both supra. That however must be done and the restriction applied, in such manner as not to intrude upon the rights of free speech and free assembly. In this case the separation was not maintained." In his concurring opinion in Thomas v. Collins Mr. Justice Jackson gives the following reasons for these variations in state power: "This wider range of power over pursuit of a calling than over speech-making is due to the different effects which the two have on interests which the state is empowered to protect. The modern state owes and attempts to perform a duty to protect the public from those who seek for one purpose or another to obtain its money. When one does so through the practice of a calling, the state may have an interest in shielding the public against the untrustworthy, the incompetent, or the irresponsible, or against unauthorized representation of agency. A usual method of performing this function is through a licensing system.

"But it cannot be the duty, because it is not the right, of the state to protect the public against false doctrine. The very purpose of the First Amendment is to foreclose public authority from assuming a guardianship of the public mind through regulating the press, speech, and religion. In this field every person must be his own watchman for truth, because the forefathers did not trust [fol. 152] any government to separate the true from the false for us. West Virginia State Board of Education v. Barnette, 319 U. S. 624, 63 S. Ct. 1178, 87 L. Ed. 1628,

147 A. L. R. 674. Nor would I. Very many are the interests which the state may protect against the practice of an occupation, very few are those it may assume to protect against the practice of propagandizing by speech or press. These are thereby left great range of freedom."

(5a) The requirement that promoters and the solicitors working under them submit proof of their good character and reputation does not discriminate against plaintiff or other religious organizations or censor their religious beliefs, nor does the regulation vest arbitrary power in the administrative board in authorizing it to withhold a license if it is not satisfied that the applicant is of good character and reputation. Such a requirement is common in statutes regulating admission to professions and occupations involving duties of a fiduciary character. (In re Stepsay, 15 Cal. (2d) 71 (90 P. (2d) 489); Spears v. State Bar, 211 Cal. 183 (294 P. 697, 72 A. L. R. 923); Leach v. Daughtery, 73 Cal. App. 83 (238 P. 160); Riley v. Chambers, 181 Cal. 589, 593 (185 P. 855, 8 A. L. R. 418); Ex parte McManus, 151 Cal. 331 (90 P. 702); Ex parte Whitley, 144 Cal. 167 (77 P. 879, 1 Ann. Cas. 13); Grundling v. Chicago, 177 U. S. 183, 187 (20 S. Ct. 633, 44 L. Ed. 725); Graves v. Minnesota, 272 U. S. 425 (47 S. Ct. 122; [fol. 153] 71 L. Ed. 331); New York ex rel. Lieberman v. Van De Carr, 199 U. S. 552 (26 S. Ct. 144, 50 O. Ed. 305); Douglas v. Noble, 261 U. S. 165 (43 S. Ct. 303, 67 L. Ed. 590); see also, 12 A. L. R. 1435, 1450; 54 A. L. R. 1104, 1112; 92 A. L. R. 400, 415; Rottsschaefer, Constitutional Law, pp. 466, 482.) The filing of a bond is also a common requirement in the regulation of occupations or activities involving the handling of entrusted funds. (Palmer v. Continental Casualty Co., 205 Cal. 34, 35 (269 P. 638); Clark v. Patterson, 213 Cal. 4 (300 P. 967, 75 A. L. R. 1124;) Grundling v. Chicago, supra; People of the State of New York v. Perretta, 253 N. Y. 305 (171 N. E. 72, 84 A. L. R. 636); see 33 Am. Jur., Licenses, sec. 54; 87 A. L. R. 145; 95 A. L. R. 1224; 103 A. L. R. 405; 120 A. L. R. 950.) The license fee is a reasonable one, covering the expenses of investigations and administration. The board has no discretion to withhold a license if the applicant's good character and reputation and his financial responsibility are established and the required bond is filed. The board is not free to deny licenses, but must act reasonably in the light of the evidence presented.

(Riley v. Chambers, 181 Cal. 589, 595 (185 P. 855, 8 A. L. R. 418); In re Holmes, 187 Cal. 640, 647 (203 P. 398); Tarpey v. McClure, 190 Cal. 593, 600 (213 P. 983); Bank of Italy v. Johnson, 200 Cal. 1, 32 (251 P. 784); People v. Globe Grain and Mill Co., 211 Cal. 121, 125 (294 P. 3); Cranford v. Jordan, 7 Cal. (2d) 465, 467 (61 P. (2d) 45); Leach v. [fol. 154] Daugherty, 73 Cal. App. 83 (238 P. 160); Hall v. Geiger-Jones Co., 242 U. S. 539, 554 (37 S. Ct. 217, 61 L. Ed. 480); Graves v. Minnesota, supra, P. 428; Douglas v. Noble, supra, p. 170; New York ex rel. Lieberman v. Van De Carr, supra; Plymouth Coal Co. v Commonwealth of Pennsylvania, 232 U. S. 531, 545 (34 S. Ct. 359, 58 L. Ed. 713); Minnesota v. Probate Court, 309 U. S. 270, 277 (60 S. Ct. 523, 84 L. Ed. 744, 126 A. L. R. 530); Yakus v. United States, 321 U. S. 414, 434, 435 (64 S. Ct. 660, 88 L. Ed. 834.))

The provision empowering the board to revoke a license in case of unfair, unjust, inequitable or fraudulent practices of solicitation is neither vague nor uncertain and affords no possibility for the censorship of religious beliefs. In Agnew v. Daugherty, 189 Cal. 446, 448-449 (209 P. 34), this court upheld a similar provision in the Corporate Securities Act making the granting of a permit dependent on the commissioner's finding that the "proposed plan of business . . . . is not unfair, unjust or inequitable" and that the methods to be used to dispose of securities "are not such as, in his opinion, will work a fraud upon the purchaser thereof." (See, also, People v. Kuder, 93 Cal. App. 42 (269 P. 198, 630); People v. Stewart, 115 Cal. App. 681, 689 (2 P. (2d) 195); Yakus v. United States, supra, pp. 426-427 and cases there cited.)

It is contended that since the trial court found that plaintiff is engaged exclusively in religious activities, the [fol. 155] Charities and Relief Ordinance is rendered inapplicable to plaintiff's solicitations because of its provision that it "shall not be applicable to solicitations made solely for evangelical, missionary or religious purposes." There is no conflict in the evidence, however, as to what plaintiff's activities are. The issue presented is one of law, namely, whether the charitable purposes for which plaintiff solicits funds are exclusively religious purposes within the meaning of the ordinance. The trial court erroneously concluded that because plaintiff solicits funds for charitable purposes as part of its religious program its

solicitations are solely for religious purposes within the meaning of the ordinance. The ordinance specifically differentiates charitable from religious purposes. No person may solicit "any contribution for any charitable purpose" without complying with the requirements of the ordinance. The ordinance does not exempt solicitations for charitable purposes undertaken by religious organizations. Solicitations for charitable purposes, namely, for "philanthropic, social service, benevolent, patriotic" purposes, are subject to regulation whether or not they are undertaken by a religious organization. The intention to maintain a sharp differentiation between charitable and religious purposes is apparent in the provision that if a solicitation for religious purposes is likely to give the public the impression that funds are sought for charity, the board shall "investigate the matter of such solicitation [fol. 156] and give publicity to its findings thereon in such manner as it may deem best to advise the public of the facts of the case." The solicitation of funds to provide food, shelter, and clothing for those in distress is clearly for a charitable purpose and is therefore regulated by the ordinance. Plaintiff admittedly solicits funds for the purpose of giving relief to persons in distress. Since this purpose is charitable within the meaning of the ordinance, plaintiff's solicitations for that purpose are subject to the ordinance.

The judgment is reversed.

Gibson, C.J., Shenk, J., and Spence, J., concurred.

DISSENTING OPINION

CARTER, J.

I dissent. The majority opinion places the stamp of validity in toto upon a regulatory ordinance containing requirements so stringent that with their enforcement humble charities and good works must inevitably bow to

"The organized charity scrimped and iced
"In the name of a cautious statistical Christ."

Admittedly the intrusion into community existence of religious activities characteristic of the secular life brings into sharp focus the conflicting loyalties to church and state, the clash of religious freedom with social legislation, (See Conscience v. The State, by Prof. C. C. McCown, 32 Cal. L.

Rev. 1; Liberty under the Fourteenth Amendment by John [fol. 157] Raeburn Green, 43 Mich. L. Rev. 437; Bill of Rights Review of Am. Bar Ass'n., vol. 1, no. 2.)

Since 1940 the subject has been brought frequently before the United States Supreme Court by the sect known as Jehovah's-Witnesses, and that court has been alert to protect the free exercise of religion against abridgement. Its recent decisions, rendered at a time when the currents of world thought have been against democracy and toleration, have, as Professor McCown comments, made a substantial contribution to the defense of the liberties guaranteed by the Constitution, and the emphasis in several of the opinions upon the rights of "little people," of causes that are humble, needy, and without financial resources, is particularly notable. Quoting from the cited article, "The justices of the Supreme Court echo the language of social and religious protest from almost the beginning of history (2500 B.C.) in Mesopotamia, Egypt, and later in Palestine, down to the present day. Such language is familiar in the Hebrew prophets, the Psalms, and the Gospels. The obligation of government to protect the rights of the weak against those who possess political and economic power has been repeatedly proclaimed by prophets, but all too seldom recognized by the powers that be. Both democracy and religion demand the protection of the advocate of unpopular causes, for practically every reform, whether political, social, or religious, begins as a protest against vested interests and [fol. 158] majority opinions. . . . In dealing with Jehovah's Witnesses the Supreme Court has shown a sanity and a consideration for the ultimate issues involved which cannot but have some effect upon the cowardice of politicians and the impatience of crowds." (32 Cal. L. Rev. pp. 14, 30.) (see also Cantwell v. Connecticut, 310 U. S. 296 (60 S. Ct. 900, 84 L. Ed. 1213, 128 A.L.R. 1352); Largent v. Texas, 318 U.S. 418 (63 S. Ct. 667, 87 L. Ed. 873); Jamison v. Texas, 318 U.S. 413 (63 S. Ct. 669, 87 L. Ed. 869); Murdock v. Pennsylvania, 319 U.S. 105 (63 S Ct. 870, 891, 87 L. Ed. 1292, 146 A. L. R. 81); Martin v. Struthers, 319 U.S. 141 (63 S. Ct. 862, 882, 87 L. Ed. 1313); West Virginia v. Barnette, 319 U.S. 624 (63 S. Ct. 1178, 87 L. Ed. 1628, 147 A.L.R. 674).) In these decisions state legislation impinging upon a claimed religious freedom has been held valid only where there has been a strong showing of an essential need for regulation in the interest of the public

safety, health, and welfare, or for the maintenance of morals, peace, and order, protection against a clear and present danger, or the like.

During the world war, as also pointed out by Professor McCown, the rise of nationalism to the status of a religious cult and the contemporary sharpening of the Christian conscience revitalized and realigned issues that were supposedly settled. Social problems have arisen which are ancient, but also very modern, and they are made the more [fol. 159] difficult of solution by the traditions and social, political, religious, and legal philosophies with which they are surrounded. This country, having just emerged from a great conflict in which a guarantee of religious liberty to all peoples was a major aim, should be on guard against the subtle undermining, in the guise of municipal regulation, of these very rights which it has gone to such lengths to secure for others. For this reason the majority holding in the present case, with its reactionary trend, is particularly deplorable.

Obviously the commission of crime in the name of religion cannot be tolerated and the state must be safeguarded. The public are entitled to reasonable protection in community life, and fanaticism or misguided earnestness cannot be allowed to hold rein over the goodwill of the people. But beyond situations of emergency and present danger, the field of regulation should be extremely narrow. Thus in Schneider v. Irvington, 308 U.S. 147, 161 (60 S. Ct. 146, 84 L. Ed. 155), the United States Supreme Court, after stressing the importance of preventing the restriction of enjoyment of the constitutional liberties, said: "In every case, therefore, where legislative abridgment of the rights is asserted, the courts should be astute to examine the effect of the challenged legislation. Mere legislative preferences or beliefs respecting matters of public convenience may well support regulation directed at other personal activi- [fol. 160] ties, but be insufficient to justify such as diminishes the exercise of rights so vital to the maintenance of democratic institutions. And so, as cases arise, the delicate and difficult task falls upon the courts to weigh the circumstances and to appraise the substantiality of the reason advanced in support of the regulation of the free enjoyment of the rights."

Using this formula to test the legislation here under review, it appears that one of the main reasons advanced

in support of the regulation is its asserted necessity to protect the public from fraud. Resort to the penal statutes and usual methods of dealing with this evil is said to afford insufficient protection, in that warm hearted and generous citizens are especially vulnerable to solicitations made in the name of a religion or charity because of the nature of the appeal and their reluctance to turn a deaf ear to any cry of the poor and needy. Thus a delicate social problem is posed. Which is the more important, to give the public added protection, over that of the penal statutes, against annoyance, inconvenience, and possible fraud, or to preserve intact the cherished right of religious liberty? Should the state essay, at the expense of invasion of a constitutional right, to protect a citizen from his own inclination, or perchance his weakness, in responding to charitable solicitation without due inquiry into the worth of the sponsored cause? Is it not more in keeping with the American tra- [fol. 161] dition to instill in youth and preserve in the thought of the people that individual independence, strength of character, moral stamina, and perception which will enable them to judge personally the good or bad faith of a colporteur or solicitor and the merit of the cause he espouses?

That some fraud may escape detection is to be anticipated. This is more or less true in all walks of life despite volumes of protective legislation. But the diversion to wrongful channels of some part of the public contribution to charity is not a major catastrophe when weighed against the cost of protection effected only by carving a large slice from the bill of rights. Indeed it may be asked whether any community can afford to undertake a regulatory program which may largely deprive the public of the opportunity to hear and respond to pleas of other than organized and municipally approved charities, thus stifling the growth and character development gained by the exercise of pity, compassion, and generosity. Small are the sums contributed by the average community to charity when compared with the large amounts customarily spent for luxuries and entertainment. In one sense the benefit of the opportunity to give where the right hand knows not what the left hand is doing is of more intrinsic value than the actual raising of the money, for all are in need of the spiritual enrichment which comes of free will offering. There are few house- [fol. 162] wives who will not cheerfully give from their

larder to ten itinerant mendicants rather than run the risk of turning away hungry one man worthy of alms. And by the same reasoning there is less danger from solicitation for unworthy causes than from regulations so stringent that they may crush the humble workers, the "little people," destroy their good deeds, impinge upon their practice of religion, and form a breeding ground for intolerance, totalitarianism, or narow nationalism.

All of this has been given recognition in the decisions of the United States Supreme Court. In the Cantwell case it is said at pages 308 and 310, "But the people of this nation have ordained in the light of history, that, in spite of the probability of excesses and abuses, these liberties are, in the long view, essential to enlightened opinion and right conduct on the part of the citizens of a democracy. The essential characteristic of these liberties is, that under their shield many types of life, character, opinion, and belief can develop unmolested and unobstructed. Nowhere is this shield more necessary than in our own country for a people composed of many races and of many creeds. There are limits to the exercise of these liberties. The danger in these times from the coercive activities of those who in the delusion of racial or religious conceit would incite violence and breaches of the peace in order to deprive others of their equal right to the exercise of their liberties, [fol. 163] is emphasized by events familiar to all. These and other transgressions of those limits the states appropriately may punish. . . . Equally obvious is it that a state may not unduly suppress free communication of views, religious or other, under the guise of conserving desirable conditions. Here we have a situation analogous to a conviction under a statute sweeping in a great variety of conduct under a general and indefinite characterization, and leaving to the executive and judicial branches too wide a discretion in its application."

Again it is said in the Schneider case at page 164: "Conceding that fraudulent appeals may be made in the name of charity and religion, we hold a municipality cannot, for this reason, require all who wish to disseminate ideas to present them first to police authorities for their consideration and approval, with a discretion in the police to say some ideas may, while others may not, be carried to the homes of citizens; some persons may, while others may not disseminate information from house to house. Frauds may be de-

nounced as offenses and punished by law. Trespasses may similarly be forbidden. If it is said that these means are less efficient and convenient than bestowal of power on police authorities to decide what information may be disseminated from house to house, and who may impart the information, the answer is that considerations of this sort do not empower a municipality to abridge freedom of speech [fol. 164] and press." The same is true with respect to abridgement of the right of religious freedom. Many recent pronouncements of similar tenor might be added to those above cited.

Before proceeding to a more detailed review of the legislation here involved, it may be stated that plaintiff is an incorporated religious organization and that it operates a mission and store, the latter being called its industrial department. Among its religious activities are the holding of religious services at its mission by a minister ordained by it, church services and missionary work, giving away the New Testament and religious tracts. It conducts its operations in substantially the following manner: Financial solicitors, working from its headquarters, endeavor to obtain money contributions. These contributions are delivered to the treasurer of the organization and are used for carrying on its religious activities. The present treasurer has been a solicitor for plaintiff for many years and retains 30 per cent of the funds collected. About 50 per cent of the funds are used for salaries and expenses. The minister's sole compensation is derived from contributions and it is said to cover no more than his expenses. Plaintiff also gives assistance in property and money to those in need. In operating its store or industrial department it acquires secondhand property, most of which is called salvage, and sold to the public. The remainder is disposed of as junk. The truck drivers who collect the property receive [fol. 165] a percentage of the salvage, but they do not participate in the proceeds derived from operation of the store. They also retain all but 10 per cent of the proceeds of the sale of the junk. Solicitors of salvage work from trucks and receive an average of 50 cents an hour. The store uses its funds for expenses of operation and occasionally does charity work. The balance is delivered to plaintiff's treasurer. None of the salvage solicitors distribute plaintiff's religious literature.

Defendant department claims that plaintiff, in operating its store, is a "promoter" as defined in the city ordinance, and demands that it obtain a license authorizing solicitations for the store. No demand is made in regard to religious activities, but a religious organization is required to file a notice of intention and obtain a permit to solicit funds for charitable purposes. Apparently defendant department determines whether an organization is soliciting for charity or for religion and has adopted a rule that 50 per cent of the amount collected must go for charitable purposes.

The trial court found on substantial evidence that plaintiff is a "duly constituted and functioning religious organization, engaged exclusively in the promulgation, by literature and word of mouth, of its religious beliefs, by and through its auxiliaries, and in the procuring of donations in the form of money and articles of value in the [fol. 166] prosecution and furtherance of its religious activities," and that if plaintiff is required to obtain a permit and pay a license fee as a condition of solicitation and receipt of donations "to be used in the furtherance of said religious activities," this "will amount to a prior restraint on the exercise of (its) religious activities within the meaning of the Constitution of the United States . . . an infringement upon the free exercise of . . . religious liberty as protected by the Constitution."

These findings require a consideration first of the question whether plaintiff's operations come in whole or in part within the exemption provision of the ordinance. Solicitations upon premises owned or occupied by the association in whose behalf the solicitation is made, and the soliciting of funds from members of the association are not subject to the promoter, solicitor, and certain other regulatory provisions of the ordinance. Exemption is also extended to "solicitations made *solely* for evangelical, missionary or religious purposes," but with the proviso that if such solicitations are conducted in a manner which, in the opinion of the board, may give those solicited the impression that the purpose of the solicitation is in whole or in part charitable, the board may investigate the matter and give such publicity to its findings as it deems best to advise the public of the facts.

In considering the applicability of the exemption to [fol. 167] plaintiff's activities it would at first blush appear,

and the trial court concluded, that inasmuch as all of plaintiff's operations, including its charitable work, are conducted for and as part and parcel of and incident to its religious purpose, all must come within the exemption. However, a review of the ordinance in its entirety indicates that by use of the word "solely" in the exemption clause, it was intended to differentiate between solicitations for promulgation and support of the religion or church itself, and solicitations for charitable work performed as part of the religious purpose, with exemption accorded to the former but not to the latter. If the exemption is thus unavailable where the religious organization solicits for charity in connection with the promulgation and exercise of its doctrines of religion (and this seems to be the interpretation placed upon the ordinance by the rules and regulations of the board and by the officers in enforcing it), then the validity of the regulatory provisions must be tested by the limitations, if any, which may be imposed upon the exercise of the right of religious liberty.

To a degree the majority opinion recognizes this fact but it implies, without straightway so declaring, that charitable undertakings are separable from the religious purpose inducing them, and that by severance they may be removed to the realm of secular affairs and there be subjected to [fol. 168] governmental regulation without intrusion of the bothersome problem of preservation of the constitutional right of religious liberty. This implication is inherent in the discussion which starts with the declaration (p. 12): "Many activities prompted by religious motives can hardly be differentiated from secular activities. If the applicability of government regulation turned on the religious motivation of activities, plausible motivations would multiply and in the end vitiate any regulation," and proceeds to state (pp. 14-15): "Activities characteristic of the secular life of the community may properly be a concern of the community even though they are carried on by a religious organization. . . . Religious organizations engage in various activities such as founding colonies, operating libraries, schools, wineries, hospitals, farms, industrial and other commercial enterprises. Conceivably they may engage in virtually any worldly activity, but it does not follow that they may do so as specially privileged groups, free of the regulations that others must observe. . . . There is no doubt that plaintiff, like many religious organizations,

regards the practice of charity as a religious duty. It is not exclusively a religious activity, however; many charitable activities spring from sources in the everyday life of the community unrelated to religion. The state itself has an active responsbility for the welfare of the poor, the aged, the sick, the unemployed, and the orphaned. There [fol. 169] is a public interest in regulating the solicitation of funds for these purposes. . . ."

In the above discussion the majority opinion quotes copiously from Prince v. Massachusetts, 321 U. S. 158 (64 S. Ct. 438, 88 L. Ed. 645), a case which has been criticized as being out of line with other recent United States Supreme Court decisions. (See Liberty Under the Fourteenth Amendment, supra, at p. 446.)

It is true that religious liberty "embraces two concepts —freedom to believe and freedom to act. The first is absolute but, in the nature of things, the second cannot be" (Cantwell v. Connecticut, supra, 310 U. S. 296, 303), and that where the religious organization conducts acitivities characteristic of the secular life of the community, they may be subject to proper regulation under the police power. But, as already pointed out, this power of regulation is not unrestricted and it can only be enforced with due regard to preservation of constitutional rights. Both freedom of religious thought and freedom of religious action come within the protection of the bill of rights. This freedom cannot be whittled away by carving out segments of religious activities and relegating them to the realm of secular affairs. If that were permitted, the right of action for a religious purpose could eventually be destroyed by the gradual severance and classification as secular of every activity undertaken to promote the religious purpose.

[fol. 170] Aside from the pronouncements found in the late federal decisions, it has long been the law of this state that a charity conducted as part of a religious practice is inseparable from the religion itself. The utter impossibility of any severance is made plain in the case of Application of Dart (1916), 172 Cal. 47 (155 P. 63, Ann. Cas. 1917D 1127, L. R. A. 1916D 905), where in speaking of the Jewish and Christian religions is is said (pp. 55-56): "In both of these religions charity is the central word. It is enjoined, not as a good thing, or a wise thing, or as a kindly thing only, *but as a fundamental part of the religion itself.* Says the Jewish faith: 'On three things the world is stayed; on

the Thorah (the law) and on worship and on the bestowal of kindness.' 'Now the end of the commandment is charity out of a pure heart,' says Paul to Timothy. 'Charity is the scope of all God's commands,' preaches Chrysostom. 'All perfection of the Christian life is to be attained according to charity,' declares Thomas Aquinas. Does it need more, does it need so much, to show that in these religions *the bestowal of charity, the devotion of life to charity, are a part of the religion itself?* And does it demand discussion to establish so plain a truth as that touching religion there is a doubtful zone which legislation should be most reluctant to enter? The founders of the nation recognized it when they placed the great guaranty of religious liberty in the constitution of a free people, and it is for every court to see that liberty is not encroached upon and that freedom [fol. 171] gnawed and impaired by any experimental legislation however well meant. So when legislation does enter that uncertain domain, the fact that it is there must bring it to condemnation. In accordance with the dictate of the Constitution itself the doubt will be resolved in favor of religious liberty. And it will be found better in the long run that the free exercise of religion be preserved in its integrity, better for the nation, better for charity itself which owes so much to religion, even if the efficiency of religious charities be not up to the standard of perfection set by the Municipal Charities Commission. If, under that standard, seventy-five cents of every dollar would go to the objects of charity, while under the less efficient methods in vogue but fifty cents of each dollar actually reaches the beneficiaries, it is not to be forgotten that there will be many millions fewer of these dollars to be distributed in charity if the activities of the religious are hampered, thwarted, and stayed."

The above comment is extremely apropos. If, under defendants' interpretation and enforcement of the ordinance, plaintiff is to be denied the benefit of the exemption clause insofar as its charitable activities are concerned, then the regulatory provisions of the ordinance must be subjected to close scrutiny in order to determine whether they infringe the guarantee of religious liberty. Although concededly acts of charity apart from religious motivation, [fol. 172] might be performed by the state, or by a professed atheist or nonreligionist, nevertheless the evidence here establishes beyond contradiction that plaintiff's charities

are an integral part of and inseparable from its religious purpose. From common knowledge and in challenge to the severance theory of the majority opinion, it must be said that acts of charity which do not stem, consciously or unconsciously, from early religious training or Christian inheritance are sparse. It is a matter of common historical knowledge that public charities and benevolent associations for the gratuitous relief of every species of distress, are peculiar to christianity; no other system of civil or religious policy has originated them; they form its highest praise and characteristic feature. The Apostle Paul in chapter XIII of his first Epistle to the Corinthians epitomized his concept of the essential intangibles of Christianity and concluded with the immortal verse: "And now abideth faith, hope, charity, these three; *but the greatest of these is charity.*" Thus charity is the heart and basic principle of plaintiff's religion. To destroy that heart leaves the body lifeless. Yet the majority opinion does just that. It declares charity to be a secular affair in spite of the above showing to the contrary and thus subjects the exercise by plaintiff of its religion to unrestricted regulation and ultimate destruction.

Moreover, the anomalous result of the majority opinion is [fol. 173] that a religious organization may use its own funds for a charitable purpose without hindrance, but if it solicits directly for the charity, the solicitation is subject to the cumbersome ordinance provisions hereinafter discussed. This makes the matter merely one of the form of the solicitation. To avoid regulation and gain the protection of the exemption, the solicitor only needs to make his plea for funds in the name of his church. The church then receives the donations and uses them for any purpose it may choose, good or bad, charitable or uncharitable, and it is not reached by the ordinance provisions.

Proceeding now to test the regulatory provisions of the ordinance as against the claimed infringement of the constitutional guarantee of religious liberty, it will be noted that the majority opinion incorporates the provisions by marginal reference and then, upon a discussion replete with generalizations, none of which standing alone can be said to contain an incorrect statement of the law, it announces the broad conclusion that, "We find nothing unduly burdensome or unreasonable in any of these provisions" (p. 15); "In our opinion the classification effected by this ordinance

is reasonable and the standards provided are adequate" (pp. 7-8).

Were each regulation discussed in detail and given separate consideration, it is doubtful that even the author of the opinion would say that none is unduly onerous. Section [fol. 174] 44.05 imposes upon any person who wishes to solicit "any contribution for any charitable purpose," a duty of filing with the department at least ten days prior to the commencement of the work, a written notice of intention containing "complete information" upon eleven comprehensive phases of the undertaking. But a glance at this section shows that the much maligned income tax forms issued by the federal government are no more complex and demanding than is this notice of intention in its requirements of itemized data. One wonders where the average almsman or solicitor is to acquire the educational background to enable him to supply such statistics. Must the opportunity for exercising one's religion by doing charitable work be limited to those who are apt in reading, writing and arithmetic?

The solicitor must show (a) "The purpose of the solicitation and use of the contribution to be solicited"; he must make (b) "A specific statement, supported by reasons and, if available, figures, showing the need for the contribution proposed to be solicited"; he must show (c) "The character of such solicitation and how it will be made or conducted." How can these requirements be fitted into the program of the itinerant religionist who solicits as he wanders, taking with the one hand to give freely with the other, reserving for himself only bare necessities? What freedom is left for the missionary and walking preacher who play so colorful a part on the American scene, soliciting their charities, [fol. 175] spreading their doctrines, without preconceived plan and as each feels himself daily to be guided, and without compiling statistics or publishing abroad the good works.

Further requirements of the notice indicate that its enforcement will doubtless effect the disappearance of all but organized institutions, for the applicant must also show the following: "(d) The expenses of the solicitation, including salaries and other items, if any, regardless of from what funds such expenses are payable; (e) What portion of the contributions collected as a result of the solicitation will remain available for application to the specific pur-

poses declared in the Notice of Intention as the object of the solicitation; (f) A specific statement of all contributions collected or received by such person or association within the calendar year immediately preceding the filing of such Notice of Intention. The expenditure or use made of such contributions, together with the names and addresses of all persons or associations receiving salaries, wages, compensation, commissions or emoluments from such contributions, and the respective amounts thereof; (g) The names and addresses of the officers and directors of any such association for which the solicitation is proposed to be made; (h) A copy of the resolution, if any, of any such association authorizing such solicitation certified as a true and correct copy of the original of such resolution by the officer of such association having charge of the records [fol. 176] thereof; (i) A statement that the signers of such Notice have read and are familiar with the provisions of this Article and will require all solicitors engaged in such solicitation to read and be familiar with all sections of this Article prior to making any such solicitation." This last quoted provision expressly bars all who have not attained a sufficient degree of learning to abide by its terms.

As a whole the involved demands are a far cry from the simple regulation endorsed in the Cantwell case, to wit: that "Without doubt a state may protect its citizens from fraudulent solicitation by requiring a stranger in the community, before permitting him publicly to solicit funds for any purpose, to establish his identity and his authority to act for the cause which he purports to represent. The state is likewise free to regulate the time and manner of solicitation generally, in the interest of public safety, peace, comfort or convenience." (310 U. S. at p. 306.) A regulation such as that described is not unreasonable and affords a sufficient basis for the opening of an investigation in the event charges of fraud should be lodged against a solicitor. (Murdock v. Pennsylvania, 319 U. S. 105 (63 S. Ct. 870, 891, 87 L. Ed. 1292, 146 A. L. R. 81).) Probably no sincere solicitor would protest having to register, carry an identification card, and conduct his activities in a seemly manner and at reasonable hours. But he should be immune from any more onerous legislative interference, even though [fol. 177] to some, his efforts might appear to be misguided.

The ordinance contains further requirements even more burdensome than those above set forth. With the notice of intention there must be filed a statement of any agreement between solicitors and the organization for which they are soliciting. (#44.06.) Whenever in the opinion of the Board of Social Service Commissioners the notice of intention does not contain sufficient information for the public concerning the facts required to be therein stated, there must be filed within 48 hours such additional information as the board requests. (#44.06). The department has power to investigate the statements in the notice of intention and the methods and manner of solicitation, to inspect records of the association for which the solicitation is made, and to issue to solicitors information cards at four cents a card. These information cards are in effect permits to solicit and they must set forth the facts stated in the notice of intention and such additional information as in the opinion of the board will be of assistance to the public in determining the nature and worthiness of the purpose for which the solicitation is made. (#44.03.) The board may recall information cards when they receive additional information which renders incorrect any statement thereon and amend them. (#44.02.) No person shall employ any misstatement, deception, or fraud in connection with the solicitation (#44.04), or use a fictitious name (#44.07.) [fol. 178] A person may not solicit for a charitable association unless it maintains records of receipts and disbursements, (#44.08.) Solicitors must have the written authorization of the organizations they represent. (##44.10, 44.11.) They must exhibit their information card to the prospective donee when soliicting (#44.12), and file a complete report of their activities with the board (#44.14). They must give receipts to donees stating various facts (#44.15). Violation of the ordinance is made punishable as a crime.

In support of its declaration of the validity of these provisions, the majority opinion states that they confer upon the department no authority to withhold information cards when the requirements are met, and it cannot be assumed that the department will abuse its authority in order to withhold them. This is true, but is also apparent that a procedure so complex and so costly in time and effort will, so far as many solicitors are concerned, be prohibitive. It is said in the Cantwell case (310 U. S. 296, 305) that "The general regulation, in the public interest, of solici-

tation, which does not involve any religious test and does not unreasonably obstruct or delay the collection of funds, is not open to any constitutional objection, even though the collection be for a religious purpose." Assuming that the provisions above quoted do not involve any religious test, nevertheless they are so demanding as not only to open the door to unreasonable delay and abuse of discre- [fol. 179] tion, but also as possibly to bar certain classes of solicitors found among the "little people." Obviously, they do unreasonably obstruct and delay the collection of funds.

Still more restrictive provisions of the ordinance apply to so-called "promoters," who are defined as "any person who for pecuniary compensation or consideration received, or to be received, solicits or is engaged in the business of or holds himself out to the public as engaged in the business of soliciting contributions for or on behalf of any other person or any charitable association, corporation, or institution, or conducts, manages, or carries on . . . or is engaged in the business of or holds himself out as engaged in the business of conducting, managing or carrying on any drive or campaign for any such purpose; provided, however, that pecuniary compensation or consideration as used herein, shall include, but shall not be limited to, participation on a percentage basis in any fund solicited, or raised, for or on behalf of any other person, firm, association or corporation; provided, further, that no person who is a bona fide paid officer or employee of a social service agency endorsed by the Board of Social Service Commissioners, shall be considered a promoter within the meaning of this article." (#44.01.)

Section 44.19, subdivision 1, provides that "No promoter shall in any manner whatsoever, solicit within the City of Los Angeles any contribution for any actual or purported [fol. 180] charitable use, purpose, association, corporation or institution without license from the Board so to do."

Subdivision 2, entitled "Application," states that "To obtain such license, such promoter shall make and file with the Board an application therefor in writing. In such application, the applicant shall set forth, in addition to such information as may be required by the Board: (a) The name and address of the applicant. . . . (b) A succinct statement of facts showing that the applicant . . . is of good character and reputation. . . . (c)

The general plan, character and method in or by which the applicant proposes to conduct its or his business as a promoter."

Subdivision 3 is entitled "Bond," and states: "At the time of so filing with the Board an application for such license the applicant shall file and thereafter maintain with the Board a good and sufficient bond in the aggregate sum of . . . $2,000 running to the City of Los Angeles for the use and benefit of interested persons and parties. . . . Said bond shall be conditioned upon the strict compliance, by the Prinicipal, with the provisions of this Article and the payment of any direct pecuniary loss sustained, through any act of grand or petty theft on the part of the Principal, by any donor or by any person on whose behalf the funds or personal property were solicited or received by the Principal. . . ."

Subdivision 5, entitled "Investigation," provides that [fol. 181] "The Board shall examine such application and shall make such further investigation of the applicant and its or his affairs as the Board shall deem advisable. If from such examination the Board shall be satisfied: (a) That the applicant is of good character and reputation. . . . (b) That applicant has sufficient financial responsibility to carry out the obligations incident to any solicitation such applicant may make within the City of Los Angeles as such promoter and that all of the statements made in such application are and each of them is true and that . . . applicant . . . has (not) violated any of the provisions of this Article or has (not) engaged in any fraudulent transaction or enterprise, and that the applicant intends to conduct its business fairly and honestly, the Board shall issue to the applicant a license to solicit as a promoter within the City of Los Angeles, contributions. Otherwise, the Board shall deny the application and refuse to issue a license, and shall notify the applicant of the decision of the Board. . . ."

Under the heading "Revocation," subdivision 6 states that "All licenses issued hereunder shall be subject to the condition that the applicant thereafter shall cease and desist from acting as a promoter within said City of Los Angeles when ordered so to do by the Board if the Board finds after a hearing . . . that any act or omission of such promoter . . . in making any solicitation or

in the conduct of the business of promoter within the City [fol. 182] of Los Angeles is unfair, unjust, inequitable or fraudulent. The Board must suspend or revoke any such license if, after hearing upon notice, the Board shall find the existence of any of the grounds hereinabove enumerated for the denial of an application for a promoter's license; provided, however, that such suspension or revocation shall be discretionary with the Board if the only ground for such revocation is such that it does not affect the licensee's honesty and integrity, or his ability properly to perform his duties as a promoter."

Subdivision 7 deals with "Termination" of licenses at the close of each fiscal year, and subdivision 8 with "Funds." The latter subdivision provides that "No promoter shall commingle any contribution with the promoter's own funds or property, or fail at any time to maintain and keep all contributions separate and apart from the promoter's own funds or property. . . . (a) It shall be unlawful for any promoter to cause or permit any person for pecuniary compensation or consideration received or to be received by such person to solicit or receive on his behalf or at his instigation, under his direction or control or in his employment, any contribution unless such person shall be registered as a solicitor by the Board. (b) No person shall be so registered as a solicitor unless he shall first appear personally before the Board and furnish satisfactory proof that he is a person of good moral character, that his reputation for honesty is good, and unless he first file with the Board and thereafter [fol. 183] maintain a bond satisfactory to the Board in the sum of . . . $500.00, conditioned for the payment of any direct pecuniary loss which may be sustained by the promoter, by any donee, or by any person on whose behalf any contribution was solicited or received, through any act of grand or petty theft, committed by such person. (c) The provisions of paragraphs b, c, d, and e of subsection 3, above, shall apply to bonds filed pursuant to this subsection. (d) The Board shall collect a fee of . . . $1.00 for each such registration. . . ."

The comment which has been made concerning the unreasonableness of the ordinance provisions relating to solicitors applies with double force to these "promoter" provisions, and they are also subject to additional criticism. [fol. 184] From the definition of a "promoter", as hereto-

fore quoted (#44.01, supra), it appears that the term is not confined to business solicitors, such as employees of a promotion agency handling fund raising campaigns, but includes any person who for pecuniary compensation solicits for another. Many solicitors for charity are indigent religionists. As an integral part of the exercise of their religious right they solicit funds in support of their cause and the charitable activities incident to it, and of necessity they retain some portion of the money collected in order that they themselves may be clothed and fed. To impose upon this class the burden of posting a $2,000 bond, of paying a license fee, and of showing sufficient financial responsibility to carry out the obligations incident to their solicitation is to seriously impede, if not prohibit, their undertakings at the outset. A required qualification of financial standing sufficient to enable such an applicant to post a $2,000 bond will neither insure honesty nor create a deterrent against fraud. In many cults and religions it is traditional that poverty and saintliness shall walk hand in hand. Many creeds view the possession of property and assets, or of more money than necessary for bare essentials, as a manifestation of sins of worldliness. Yet history shows that some of the finest deeds of charity and most unselfed works known to man have been accomplished by adherents of these views. It is [fol. 185] thus a dangerous legislation which would impede the charitable impulses and hamper the undertakings of all but the financially able—which would give to men of property but deny to the poor the right equally possessed by both to develop and carry out the tenets of their creed.

The fee of $25 may not seem large but when it is combined with the expense and difficulty of obtaining a bond (if indeed such could be obtained by an indigent religionist even if the premium were paid for him), and establishing the vague condition of "financial responsibility," it involves cumulative burdens too heavy to be borne. In seeking to justify its declaration of the reasonableness of these provisions, the majority opinion states that the filing of a bond is "a common requirement in the regulation of occupations or activities involving the handling of entrusted funds," and that "The license fee is a reasonable one, covering the expenses of investigations and administration" (p. 20). This latter statement may have been inspired by the fact that the late federal decisions speak of the distinction between a li-

cense fee solely to defray the costs of enforcement of a regulatory statute and one for revenue purposes, condemning only the latter. But here, even if the regulatory provisions of the ordinance were otherwise reasonable as applied to religionists and justified the imposition of a fee sufficient to meet the costs of administration, there is no indication whatsoever that these costs would amount to $25 [fol. 186] for the handling of each application or that that sum was fixed in contemplation of reimbursement for expenses.

The following excerpt from Murdock v. Pennsylvania, 319 U. S. 105, pp. 111-113 (63 S. Ct. 870, 891, 87 L. Ed. 1292, 146 A. L. R. 81), is pertinent: "It is plain that a religious organization needs funds to remain a going concern . . . Freedom of speech, freedom of the press, freedom of religion are available to all, not merely to those who can pay their own way. . . . Those who can tax the exercise of this religious practice can make its exercise so costly as to deprive it of the resources necessary for its maintenance. Those who can tax the privilege of engaging in this form of missionary evangelism can close its doors to all those who do not have a full purse. Spreading religious beliefs in this ancient and honorable manner would thus be denied the needy. Those who can deprive religious groups of their colporteurs can take from them a part of the vital power of the press which has survived from the Reformation. . . . In all of these cases the issuance of the permit or license is dependent on the payment of a license tax. And the license tax is fixed in amount and unrelated to the scope of the activities of petitioners or to their realized revenues. It is not a nominal fee imposed as a regulatory measure to defray the expenses of policing the activities in question. It is in no way apportioned. It is a flat license tax levied and col- [fol. 187] lected as a condition to the pursuit of activities whose enjoyment is guaranteed by the First Amendment. Accordingly, it restrains in advance those constitutional liberties of press and religion and inevitably tends to suppress their exercise. . . . So, it may not be said that proof is lacking that these license taxes either separately or cumulatively have restricted or are likely to restrict petitioners' religious activities. On their face they are a restriction of the free exercise of those freedoms which are protected by the First Amendment. . . . Itinerant evangelists moving throughout a state or from state to state

would feel immediately the cumulative effect of such ordinances as they become fashionable. The way of the religious dissenter has long been hard. But if the formula of this type of ordinance is approved, a new device for the supression of religious minorities will have been found. This method of disseminating religious beliefs can be crushed and closed out by the sheer weight of the toll or tribute which is exacted town by town, village by village. The spread of religious ideas through personal visitations by the literature ministry of numerous religious groups would be stopped."

It will further be noted that the provision defining "promoters" as heretofore quoted (#44.01, supra), includes a special exemption running in favor of bona fide paid officers and employees of social service agencies endorsed by the board. The conditions which a social service agency [fol. 188] must meet to secure endorsement are set forth in a detailed separate ordinance, the relevant portions of which are incorporated in the majority opinion by marginal reference. One condition is: "(h) That the officers and employees of such corporation or association are persons of good moral character and reputation and that the corporation or association has exercised reasonable care in selecting persons of good moral character and reasonable experience as solicitors for its funds."

Apparently no bonding or license requirement is imposed upon these solicitor-employees, or in their behalf upon the organization they represent. Thus, the solicitors for the organized charity hold a great primary advantage over the unorganized worker, with no sound reason for the discrimination. Graft and corruption can flourish, and fraud can emanate from high places as well as low, and through organization these evils are sometimes hidden and the more securely entrenched. Also the percentage of contribution retained to meet the expenses and recompense the employees of charitable institutions is apt to be higher than that retained by unorganized workers or sincere and humble religionists who sacrifice all in the practice of their religion. Abuses and breaches of trust do occur but who can say that the hazard is greater in unorganized classes of workers, whose illicit gains are probably small, compared with what is lost when a large institution becomes permeated with corruption.

[fol. 189] Vital need exists for the individual as well as for the organized worker in both charitable undertakings and general benefits derived from the spreading of religious doctrines. There are many dark places where the light of organized charity does not penetrate—many needy whom it does not reach. To these people the tender ministrations of sincere and unfettered religionists bring succor and salvation. The unreasonable curtailment of this activity merely because some are addicted to fraudulent and deceitful practices in the name of charity, is as unthinkable as would be the dissolution of established institutions merely because dishonesty and corruption have at times been uncovered in their administration. The public as a whole cannot be freed from the entire power of decision as to the worth of the cause for which they are solicited or their inclination to contribute. If the constitutional guarantees are to be upheld, then the public must expect to bear some portion of the burden of seeing that their gifts are made only to worthy and honestly administered causes.

Another objectionable provision of the ordinance is that which requires the promoter to furnish "a succinct statement of facts showing that the applicant . . . is of good character and reputation." Those who contribute to charity are not so much concerned with the "reputation" of the solicitor as they are with the intended use to which the donations are to be put. A most wicked man of public [fol. 190] ill repute may espouse a very worthy cause or do a very good deed. Religionists and reformers are often called from the gutter whence they return to make expiation for their wrong doings by trying to save others from a like fate and to aid the redemption of those who may already have strayed. Forceful and effective work has been done by the reformed, turned reformer, and many of these people labor on without affiliation with any recognized institution and without financial help other than that gleaned through solicitation.

Hence, it would seem that if any statement is to be demanded in connection with a reasonable requirement for registration and identification it should embrace no more than an averment of present honesty and sincerity in the disbursement of money and property for the purpose for which they are solicited. Reputation is not an issue.

The requirement of section 44.19 that the officials may make an investigation and if "satisfied" that the applicant is of "good character and reputation" they may issue a license, places upon the applicant the burden of establishing this requirement as a condition precedent to the exercise of his right of religious liberty. Such a requirement is not a sufficiently fixed and definite standard to safeguard the free exercise of the constitutional right here involved. In the exercise of their power the officials might conclude that an applicant does not qualify merely because of their [fol. 191] opinion concerning his particular religious belief and creed. The way of the dissenter is usually hard and by reason of his views his reputation in the eyes of a large group, or a majority, may be far from good and his character at least questionable if not downright immoral. What fair qualification to the right of religious liberty can be conceived which limits its exercise to those who have good reputation and character, and denies it to those who have not?

It is said in Murdock v. Pennsylvania, supra (319 U. S. 105, 116): "Plainly a community may not suppress, or the state tax, the dissemination of views because they are unpopular, annoying or distasteful. If that device were ever sanctioned, there would have been forged a ready instrument for the suppression of the faith which any minority cherishes but which does not happen to be in favor. That would be a complete repudiation . . . of the Bill of Rights." And again in Cantwell v. Connecticut, supra, (310 U. S. 296, 310): "In the realm of religious faith, and in that of political belief, sharp differences arise. In both fields the tenets of one man may seem the rankest error to his neighbor. To persuade others to his own point of view, the pleader, as we know, at times, resorts to exaggeration, to vilification of men who have been, or are, prominent in church or state, and even to false statement. But the people of this nation have ordained in the light of history, that, in spite of the probability of excesses and [fol. 192] abuses, these liberties are, in the long view, essential to enlightened opinion and right conduct on the part of the citizens of a democracy."

Subdivision 6 of section 44.19 of the ordinance is also subject to criticism. It authorizes the revocation of the license where the licensee, in making the solicitation, is un-

fair, unjust, inequitable, or fraudulent. These grounds, except the one last stated, are vague and uncertain and may well result in the same religious censorship arising from a determination of good character and reputation.

Subdivision 8 of the section, dealing with the qualifications of solicitors for promoters, is subject to the same objections as the rest of the section. The only difference is the amount of the fee and the size of the bond. It requires a "good moral character," and a reputation for honesty that is good.

It is not an obstacle to plaintiff's attack on section 44.19 that it has not sought a license or that if the public officials act arbitrarily their action is subject to jurisdictional review. The section on its face operates as a prior censorship on the free exercise of religious liberty. (Cantwell v. Connecticut, supra.)

There is another ordinance which concerns the regulation of pawnbrokers, secondhand dealers, and junk dealers (Los Angeles Municipal Code, #24,01). Although its provisions must be considered in relation to the operation [fol. 193] of the store or so-called industrial department of plaintiff, the subject need not be developed here, for from the evidence it is clear that the store partakes of enough of the character of a commercial enterprise to justify the restrictions imposed. In the main I can concur in the conclusions (although not the reasoning upon which they are based), expressed in the majority opinion with respect to this phase of the case. The store is not conducted as a profit making institution but it is in the business of selling used property. The operations of junk dealers and pawnbrokers have long been recognized as a distinct class of business subject to regulation under the police power in order to facilitate the recovery of stolen property and the preservation of health. (See 43 C. J. pp. 389-390; 43 Id. 410-411; 16 C. J. S., Constitutional Law, #189.)

It is not contended that the regulatory provisions of section 24.01 are invalid if considered apart from the question of the guarantee of religious liberty. Even assuming that the section must be viewed in the light of the right of free exercise of religion, there seems to be nothing arbitrary or unreasonable in its regulatory requirements. The measure is patently a police regulation and the specified fee is not a tax for revenue. That fee does not have combined with it the other financial burdens imposed under the

ordinance dealing with promoters and hence it is distin-
[fol. 194] guishable. Morever, the operation of the store has most of the aspects of an ordinary commercial enterprise.

Such ordinance (Los Angeles Municipal Code, #24.01) provides that persons who are to engage in the regulated business must annually apply for and receive a written permit. Under subsection (c), entitled "Requisites of Permits," it specifies the following requirements or "standards": (1) The original application must state "by street and number the place where such business is proposed to be conducted" or, in the case of junk collectors having no fixed place of business, "their residence by street number." The application "shall be signed by the applicant and shall contain his residence address." (2) The payment in advance of an annual fee of $25 ($50, if jewelry, watches "or similar secondhand merchandise" is to be dealt in). (3) Upon receipt of the application "the Board shall cause to be investigated the business of the applicant and location at which applicant proposes to engage in business as specified in said application. Thereafter the Board may issue a permit . . . for the remaining portion of the current year." (4) Persons operating under the ordinance must "secure an annual renewal of such permit commencing January 1st of the succeeding year." (5) Persons holding "an ordinary" permit must apply for and secure a "special permit," "in the manner provided . . . for securing ordinary permits," before dealing in "secondhand jewelry, precious
[fol. 195] stones, precious metals, . . . watches or other similar secondhand merchandise.

Further, regulations or "standards" set by the ordinance include the following: "The Board shall not grant any permit . . . to persons who fail, refuse or neglect to comply with the laws and ordinances relating to and regulating the business for which such permit is sought"; "If persons holding permits . . . shall violate any of the provisions of this Section (the Municipal Code section setting forth the ordinance in question) or any provision of any other ordinance, or any law relating to or regulating any such business, or shall conduct or carry on such business in an unlawful manner, the Board . . . shall revoke such permit," but only upon following the procedure "in the manner provided in Section 22.02 of this Code" (which procedure is not questioned); permit holders "shall file reports, on forms

provided by the Chief of Police, listing the merchandise received or purchased on the preceding day, the hour of such receipt or purchase, the "true name and address of the party making the sale, delivery or pledge as nearly as the same is known to or can be ascertained by such person together with a description of such party," the number of the pawn ticket issued, if a pledge is involved, and the amount loaned, and a description of each article pledged, received or purchased. The permit holder is also required to keep "a complete record of all goods . . . pledged to [fol. 196] or purchased or received by him" which record "shall be open at all times during business hours to the inspection of any member of the Police Department."

The mentioned provisions (and the same is true of the further provisions not herein epitomized) are not unreasonable or uncertain. Substantially nothing more is required for an original permit than the payment of the moderate fee and the filing of the written and signed application giving the data as to the location of the proposed business and the applicant's name and residence address. The requirements for compliance with law and the keeping and filing of reports, etc., after commencing business, are reasonably related to the nature of the business and the purposes of the regulations. These latter provisions furnish a proper and exclusive standard for guidance of the board in passing on applications for renewals of permits or proceedings to revoke permits. The very moderate requirements for original issuance of permits, hereinabove set forth, leave little if anything, beyond the suitability of the proposed location, to the discretion of the board. This ordinance fully meets the constitutional requirements that regulatory laws of this type establish reasonable standards for the guidance of the permit-issuing board.

Defendants contend that injunctive relief is not available to plaintiff, and that there is no showing of irreparable injury. Generally, public officers may be enjoined from [fol. 197] enforcing an unconstitutional statute, and section 526(4) of the Code of Civil Procedure and section 3424(4) of the Civil Code have no application to such situations. (Brock v. Superior Court, 12 Cal. 2d 605 (86 P. 2d 805); Bueneman v. City of Santa Barbara, 8 Cal. 2d 405 (65 P. 2d 884, 109 A. L. R. 895).) Where a criminal statute or ordinance causes irreparable damage to property rights, the injured party may attack its constitutionality in an action

to enjoin its enforcement. (See Jones v. City of Los Angeles, 211 Cal. 304 (295 P. 14); Sullivan v. San Francisco Gas Etc. Co., 148 Cal. 368 (83 P. 156, 7 Ann. Cas. 574, 3 L. R. A. N. S. 401); Los Angeles T. Ins. Co. v. Los Angeles, 52 Cal. App. 152, 156 (198 P. 1001); San Diego T. Assn. v. East San Diego, 186 Cal. 252 (200 P. 393, 17 A. L. R. 513); and Abbey Land etc. Co. v. San Mateo, 167 Cal. 434, 438 (139 P. 1068, Ann. Cas. 1915C 804, 52 L. R. A. N. S. 508).)

An interference with the solicitation by plaintiff of contributions is an interference with its property rights in the sense that its right to collect and then use the funds will be impeded. Even if it be assumed that no injury to property rights is threatened, it seems that injunctive relief would be appropriate to restrain the enforcement of a criminal statute where the attack thereon consists of a bona fide claim that the statute violates one of the personal liberties guaranteed by the Constitution, and that claim is not wholly lacking in merit on its face. In such case the injury consists [fol. 198] of the consequences of the enforcement of the law to the person, viewed in the light of the exalted standing of the constitutional guarantees. These consequences under the procedure in this state are serious.

A violation of the ordinance being a misdemeanor, the case would be cognizable only in an inferior court. From that court the only appeal available is to the superior court, or to its appellate department. If that court denied relief plaintiff would have no recourse to this court or the district court of appeal by appeal or certiorari, although in the event of being imprisoned he would have the remedy of habeas corpus. (Portnoy v. Superior Court, 20 Cal. 2d 375 (125 P. 2d 487).) The cases heretofore cited are not determinative of the point. They merely state the rule that injunctive relief will be given if injury to property rights is threatened. That does not exclude such relief where the injury is to personal rights.

It has been recognized that personal rights may be protected by equity, and they obviously should be, as they are more sacred than property rights. It is said in 28 American Jurisprudence, Injunctions, section 71: "However, there have always been some clearly defined exceptions to the general rule, and there is a progressive tendency on the part of the courts to remedy by injunction, injuries to personal rights. This, is, perhaps, as it should be, because the per- [fol. 199] sonal rights of citizens are more sacred and, by

every test, of more value than things that may be measured by a purely monetary standard, and the courts have expressed difficulty in understanding why injunctive protection of the one class of rights should be placed above similar protection of the other. It may be added that the courts with great uniformity base their jurisdiction to protect purely personal rights by injunction nominally on an alleged property right, where in fact no property rights are invaded, so that the rule seems to be one of those known chiefly by its breach rather — its observance." (See also, 14 A. L. R. 295.) Section 526 of the Code of Civil Procedure does not limit the injury to property rights. On the contrary it authorizes an injunction where the acts would produce great or irreparable injury "to a *party* to the action." (See Nation v. Chism, 154 Okla. 50 (6 P. 2d 766).)

For the reasons above stated, I am of the opinion that the judgment of the trial court should be modified by restricting the injunctive relief to alleged violations of all provisions of the Municipal Code here involved except section 24.01 which I believe to be valid.

Schauer, J., concurred.

[fol. 200] DISSENTING OPINION

"EDMONDS, J., Dissent: In this case, the trial court, upon undisputed evidence, found that the Gospel Army was procuring donations for the purpose of furthering its religious activities. Because these funds are used in part for the purpose of giving relief to persons in distress, Mr. Justice Traynor declares, as a matter of law its activities are charitable and not religious. I cannot concur in that conclusion, nor in the construction of the Los Angeles Municipal Code as requiring the issuance of permits to either organizations or promoters without an appraisal of "the nature or worthiness of a religious cause." And if, contrary to the evidence and findings of the trial court, the Gospel Army, as a matter of law, is a charitable institution, then, by the challenged ordinance it is arbitrarily denied the right to exist unless it complies with undisclosed standards of the commissioners and carries on its operations in accordance with arbitrary and unreasonable regulations.

As Mr. Justice Henshaw pointedly stated in considering an earlier ordinance of the city of Los Angeles, which, like

the one now before the court, gave municipal authorities broad and arbitrary power over every institution ministering to human suffering and spiritual need, charity is a fundamental part of religion. Speaking of the work of the Salvation Army, he said: "Profoundly impressed with the Founder's sympathy for the poor and afflicted, and with His teachings that 'Now abideth faith, hope and [fol. 201] charity, these three, but the greatest of these is charity,' and 'Now, the end of the commandment is charity out of a pure heart,' it has made its special field of religious work the relief of the destitute and rescue of society's outcasts. It has found that it cannot lead the spirit of the weary and heavy burdened without first ministering to his physical necessities. While 'man does not live by bread *only*,' he cannot live at all without bread. Therefore, the charitable organizations of the Salvation Army are vital, integral parts of its religious life and work." (In re Dart, 172 Cal. 47, 49.)

The Gospel Army also endeavors to gain converts for its religious doctrines and carries on activities which minister to material need. The expense of conducting its work is largely met by donations of money and second hand goods solicited from the public. The net proceeds from each of these main sources of income go into the Army's treasury from which is paid the cost of religious services, free distribution of tracts and religious literature, as well as food, lodging, clothing and other necessaries for those in need. The record discloses no segregation of such funds on the books of the Army as being for a religious or for a charitable purpose. Upon this evidence the trial court found that if the Gospel Army is required to comply with the provisions of the ordinance, such enforcement "will amount to a prior restraint on the exercise of their religious activities within the meaning of the Constitution [fol. 202] of the United States . . ." Mr. Justice Traynor sweeps aside the evidence and the trial court's findings upon the ground that, as a matter of law, charity has no place in religion, and whenever an organization carrying on religious activities steps aside from the promulgation of its spiritual doctrines to extend a helping hand by the alleviation of human suffering, it becomes subject to onerous and restrictive regulations. So narrow a view of the practice of religion runs counter to all of the fine principles of human conduct which, more and more,

are leading men of good will to help those less fortunate along the daily path. A religious man, it has been said, is one "whose light shines in the dark places of the earth through righteous acts and helpful deeds."

Large groups of citizens of every faith and creed are regularly devoting much time and effort, at great personal sacrifice, to the cause of those who are in need. If the work in behalf of the less fortunate among us is done in the name of or in connection with the promulgation of a religious doctrine, then the Los Angeles ordinance authorizes the Department of Social Service to add to the indifference, inertia and self interest which solicitation must always overcome, either the condemnation or damnation by faint praise of an official bureau which is authorized to reach a conclusion without regard to anything but the personal opinion of some administrative officer as to the worthiness of the purpose. Whatever is done in the name of religion [fol. 203] for a charitable purpose, the ordinance declares in effect, is to be viewed with suspicion and distrust. There can be preaching without official intervention but any practice of Christian virtues is to be carried on only under the watchful eye of the Department of Social Service according to its notions of "the public interest." And yet my associates say that such legislation lays no restraint upon religion freedom.

It is, of course, true that reasonable regulations may be imposed upon an organization carrying on religious activities. The rule, as stated by the Supreme Court of the United States is that "The general regulation, in the public interest, of solicitation, which does not involve any religious test and does not unreasonably obstruct or delay the collection of funds, is not open to any constitutional objection, even though the collection be for a religious purpose."

More specifically, the court declared that "a State may protect its citizens from fraudulent solicitation by requiring a stranger in the community, before permitting him publicly to solicit funds for any purpose, to establish his identity and authority to act for the cause which he purports to represent." (Cantwell v. Connecticut, 310 U. S. 296, at pp. 304, 306.) But the ordinance here challenged goes far beyond these limits.

As the statute reads, its provisions shall not be applicable to "solicitations made solely for evangelical, mission-

ary, or religious purpose." These terms are not defined, [fol. 204] yet the lawmakers provided "that in any case where it shall come to the attention of the Board that any solicitation has been or is being or intended to be made for evangelical, missionary or religious purposes but in such manner as in the opinion of the Board is calculated to give or may give the impression to the person or persons solicited in any such solicitation or to the public that the purpose of such solicitation is either in whole or in part charitable, then the Board, if in its opinion the public interest will be subserved thereby, shall investigate the matter of such solicitation and give publicity to its findings thereon in such manner as it may deem best to advise the public of the facts of the case." (Sec. 44.16.) If this curious language means anything, it extends the exemption to any solicitation in behalf of a religious organization for a purpose in whole or in part charitable but allows the Board of Social Service Commissioners to state to the public, "in such manner as it may deem best," its official disapproval of any such practical application of the Master's teachings to human need or of the methods by which help is being extended. Under that construction of the exemption provision, no license for the appellant's solicitations may be required. But it probably would be more disastrous to the work of a religious organization to arbitrarily and publicly condemn its activities than to require it to obtain a license, and equally violation of constitutional guarantees.

[fol. 205] But considering the provisions of the ordinance from the standpoint that, under its express terms, only solicitation for contributions to meet the expense of doctrinal church activities is exempt from regulation, although the good works done by an organization such as The Gospel Army are, to borrow Mr. Justice Henshaw's words, "vital, integral parts of its religious life and work", no person may solicit a contribution for its support who has not obtained an "information card". Such a card is issued by the Department of Social Service only following the filing of a "notice of intention" to solicit, which shall include the detailed information specified by section 44.05 of the Code. (ante p. —.) This information is not limited to facts relating to the identity of the proposed solicitor and his authority to act for a particular organization. Also there

must be submitted detailed information relating to the organization's purpose and business affairs and those who are supporting it financially or employed in its activities. In short, all of the data demanded concern the merits of the cause which is asking the public for assistance and the scope of the work it is carrying on.

Moreover, the information card which allows one to solicit, providing he presents it to the person who is approached for a donation, "allowing him sufficient opportunity to read the same, before accepting any contribution . . . ." (sec. 44.12), is not issued as of course upon the filing [fol. 206] of the notice of intention. There is neither requirement nor even suggestion in the ordinance to support Mr. Justice Traynor's suggestion that these cards, "which are in effect permits to solicit, are issued automatically upon the filing of the required information and the payment of the 4¢ for each card." On the contrary, the Department of Social Service shall have the power: "(a) To investigate the allegations of the Notice of Intention, or any statement or reports; (b) To have access to and inspect and make copies of all books, records and papers of such person, by or on whose behalf any solicitation is made; (c) To investigate at any time the methods of making or conducting any such solicitation. . . . ." (Sec. 44.03.)

A majority of the court sanction the indefinite terms of the ordinance relating to the issuance of a permit upon the presumption that the Board of Social Service Commissioners will fairly investigate the facts in connection with each application and promptly make a determination upon them. It may not be asumed, say my associates, that the Board will whimsically or capriciously deny an application, and the courts will relieve from unjust and arbitrary action. The same argument was advanced by the state in Cantwell v. Connecticut, supra, and summarily rejected. The opportunity to obtain judicial correction, said Mr. Justice Roberts, speaking for the court, does not justify interference with constitutional rights. "The availability of a judicial remedy for abuses in the system of licensing [fol. 207] still leaves that system one of previous restraint which, in the field of free speech and press, we have held inadmissible. A statute authorizing previous restraint upon the exercise of the guaranteed freedom by judicial decision after trial is as obnoxious to the Constitution as

one providing for like restraint by administrative action." (p. 306).

Moreover, the inquisitorial authority of the Department is a continuing one. "Whenever, in the opinion of the Board of Social Service Commissioners the Notice of Intention does not disclose sufficient information for the public concerning the facts . . . required to be stated in such Notice or concerning the person or association making such solicitation or on whose behalf such solicitation is made, then, upon the request of said Department, there shall be filed, in writing, within forty-eight (48) hours after such request, such additional information as may be required by said Board upon the foregoing subjects." (Sec. 44.06.) This right may be exercised after the Board has made an investigation, and there is no limitation upon the time within which inquiries must be concluded. Also, there is no restriction upon the number of additional requests the Board may make for information, or any time fixed in the ordinance to prevent the Board from taking months to look into the purpose and scope of an organization's activities; designed delay is invited by the censorious terms of the legislation, and the widest discretion is given to harass, condemn, delay and obstruct. And if perchance [fol. 208] the applicant represents an unpopular cause, then the authority of the Board of Social Service Commissoners to publish the results of its investigations "by such means as may be deemed best to reach the general public and persons interested" (Sec. 44.02) gives opportunity for the undermining of public confidence and provides a vehicle for official propaganda which may do irreparable damage.

Occasion for discrimination is also afforded by section 44.03 which allows the Department of Social Service to issue an information card in a form stating either that the authorization given does or does not constitute an endorsement of the charitable association for which solicitation is to be made. Moreover, the information card may show the pertinent facts set forth in the notice of intention and any additional information "as shall in the opinion of the Board be of asistance to the public to determine the nature and worthiness of the purpose for which the solicitation is made . . ." The information card which the solicitor must carry with him, and either read to each prospective contributor or present to such person for his perusal,

allowing him sufficient time to read it before accepting any donation, may therefore be a sizeable volume of data which in practice, if not in purpose, will effectively block public support of an organization which has a legitimate purpose and against which no criticism justly may be made.

To meet the demands of the city, the receipt required for each donation must be signed by the solicitor and con- [fol. 209] tain "in addition to a description of the amount and kind of the contribution, substantially the following matters: (a) The name of the association, if any, in whose name or upon whose behalf the solicitation is made. (b) A statement as to whether the contribution solicited is to be applied for the general purposes of such association; if any, or for specific purposes, and if for specific purposes the nature thereof shall be clearly stated. (c) A statement that the Information Card, issued by the Department, was presented to the person making the contribution for his perusal prior to receipt by the solicitor of the contribution receipted for . . ." (Sec. 44.15.) Only by means of a traveling office could a solicitor comply with all of these requirements.

As justification for his position, Mr. Justice Traynor asserts that "activities characteristic of the secular ilfe of the community may properly be a concern of the community even though they are carried on by a religious organization." A host of decisions is cited in support of that statement. But the cases relied upon are authority only for the proposition that certain activities such as the sale of religious periodicals by minors, beating a drum on the traveled portions of the city streets, and parades, although carried on by a church, are subject to reasonable regulation by the State under its police power; they do not purport to declare what many be done in the field of reasonable regulation of solicitation for religious purposes. Indeed, excluding In re [fol. 210] Dart, supra, only two of them concerned the constitutionality of a statute regulating the solicitation of funds. One of these two, Prince v. Massachusetts, 321 U. S. 158, upheld a statute restricting the activity of minors. The other decision, Murdock v. Pennsylvania, 319 U. S. 105, expressly excluded consideration of the question now in controversy, for the court declared that there was no issue before it in regard to a registration system for solicitors.

As to In re Dart, supra, the statement from it which is quoted in the majority opinion has no application to solicita-

tion for religious work; it concerns the regulation of organizations which seek contributions for charitable purposes. The declaration that, under the police power, there may be reasonable supervision over persons engaged in the occupation of obtaining money from the public for the maintenance of an organization carrying on charitable work is followed by the pronouncement: "Every person has the right, under our constitution, and perhaps withouts its guarantee, to solicit contributions for a worthy charitable purpose, provided he acts in good faith and honestly applies them to that purpose. The ordinances give the commission power to deprive persons of that right without cause or reason. To the extent that they give this arbitrary power they are contrary to the constitution and void." (In re Dart, supra, p. 57). Certainly the constitutional guarantee gives as much, if not greater, protection to religious endeavors which include [fol. 211] ministration to relieve human suffering. For as James wrote concerning faith without works, "If a brother or sister be naked, and destitute of daily food, And one of you say unto them, Depart in peace, be ye warmed and filled; notwithstanding ye give them not those things which are needful to the body; what doth it profit?" (Jas. 2:5, 16.)

But if the practice of religion may be legally isolated beyond the contaminating reach of charity, then, in my opinion, the legislation is vulnerable to attack as unlawfully circumscribing the activities of every organization which carried on its work without the professon of religious doctrine. Unquestionably the occupation of the solicitation of contributions for charitable purposes may be subjected to regulation, but legislatures or municipalities may not, under the guise of the police power, impose unnecessary and unreasonable restrictions upon the use of private property or the pursuit of useful activities. (McKay Jewelers Inc. v. Bowron, 19 Cal. 2d 595; In re Fuller, 15 Cal. 2d 425; Skalko v. City of Sunnyvale, 14 Cal. 2d 213; In re Monrovia Evening Post, 199 Cal. 263; Frost v. City of Los Angeles, 181 Cal. 22; Ex parte Dickey, 144 Cal. 234; Larson v. Bush, 29 Cal. App. 2d 43.) Also the general and indefinite terms used in the ordinance wholly fail to meet the constitutional requirement that a regulatory statute must specify a standard for official action. (In re Dart, 172 Cal. 47; Hewitt v. State Board of Medical Examiners, 148 Cal. 593; Schaezlein v. Cabaniss, [fol. 212] 135 Cal. 469; County of Los Angeles v. Hollywood Cemetery Assn., 124 Cal. 349; Ex parte Sing Lee, 96 Cal.

359; Yick Wo v. Hopkins, 118 U. S. 356; Hoyt Bros Inc. v. Grand Rapids, 260 Mich. 447.)

The provisions of the Municipal Code which have been summarized in connection with the discussion concerning their application to the charitable work of a religious organization, effectively hamper and restrict any endeavor to better the lot of those in need of material aid and comfort if that effort does not conform to an undisclosed standard. The work of every organization must meet the approval of the department; such as do not, are unfit to live. Moreover, in its practical aspects the ordinance is particularly burdensome upon organizations such as the Gospel Army, which continually solicits donations. "Every person soliciting any contribution for any charitable purpose must file with the Department within 30 days after the close of any such solicitation or within 30 days after a demand therefor by the Department a report to the Department, stating the contributions secured from or as a result of any such solicitation, and in detail all expenses of or connected with such solicitation, and showing exactly for what uses and in what manner all such contributions were or are to be disbursed or distributed." (Sec. 44.14.) What constitutes "the close of any such solicitation?" And to what extent must the organization show "exactly for what uses and in what manner all such contributions were or are to be disbursed or [fol. 213] distributed?" Is every person who is a beneficiary of the organization's helpfulness to be named? Is the value of that aid to be stated in terms of money or spiritual comfort? Must a substantial part of the effort intended for human betterment be devoted to making reports to a governmental agency set upon the minute and continuing supervision of all charitable activities?

Very obviously, the purpose of these reports is to provide a basis for keeping each organization within the range of a policy which is not stated in the ordinance and may be as variable as differing views upon permissible bounds of social service. For an information card may be recalled by the Board upon receipt of data which, in its opinion, shall render incorrect any statement set forth in that document. Under such circumstances, the Board shall amend or correct the card, or issue a new one in accordance with the additional data obtained. But impliedly each card is to be issued for a period which need not be uniform as to all applicants, and is valid only during that time (sec. 44.02). Under those

provisions, only by carrying on its work in accordance with the views of the Board of Social Service Commissioners, and making reports in such detail as to satisfy demands which cannot be measured against any standards set by law, may an organization continue.

Also, there is no standard or limitation provided in regard to the data printed upon the information card. As a solicitor must show this card to each prospective donor, al- [fol. 214] lowing him sufficient opportunity to read it before accepting any contribution, the Board may arbitrarily express disapproval of a worthy charity or make the information so voluminous that solicitation would be effectively blocked. And the unlimited power given to the Board to publish the results of its investigations is broad enough to authorize presentation to the public of confidential data concerning policies and details of management having no relation to reasonable licensing requirements.

If an organization runs the gauntlet of these provisions and is able to carry on its work to the satisfaction of the official censors of charitable purposes, every person whom it employs for "pecuniary compensation or consideration" to obtain subscriptions from the public must also secure a license. The way of an applicant for such a license is a hard one. In his application he must set forth, in addition to facts showing that he "is of good character and reputation", "such information as may be required by the Board." Thereupon, the Board shall make such investigation of the applicant and his affairs as it deems advisable. No limitation as to the extent of such an investigation is imposed and no time is fixed within which it must be concluded. Any ground that would have led to a denial of the license is also ground for its revocation.

If, contrary to the narrow interpre-tion of religion laid down by my associates, human kindness is included in its practice, then these provisions governing the licensing of [fol. 215] individuals to solicit contributions are clearly invalid, for they go much further than to lay down a reasonable requirement for registration and identification. Indeed, there is no statutory statement of the data which an applicant must submit, for the specified information is "in addition" to that which may be required by the Board. The majority allows the regulation of solicitation for religious purposes to go far beyond the limitation specified

by the United States Supreme Court in the Cantwell case, supra, by approving the requirements that a promoter or solicitor be granted a license only if the Board is satisfied that he is of good character and reputation and equal to the financial responsibility incident to the proposed solicitation; that he file a bond and pay a license fee; and that he give a complicated form of receipt to each contributor. The provision authorizing the revocation of a license after a hearing, for any "unfair, unjust, inequitable or fraudulent" act or for any ground that would have led to a denial of the license also goes far beyond the permissible bounds fixed for regulation of solicitation for a religious purpose.

And construing any organized plan for taking care of those in need of material aid as beyond the reach of religious duty or concern, the licensing provisions which have been mentioned in the next to the last paragraph unreasonably restrict the right of an individual to engage in the business of solicitation for charitable purposes and also [fol. 216] fail to set up a definite standard which the applicant for a license must meet. The cases cited by the majority as authority for the proposition that a promoter or solicitor may be required to submit proof of his good character and reputation stand only for the rule that a state may do so in connection with regulation of the practice of a profession which requires the possession of special knowledge, skill and training, or the sale of merchandise of a particular character. (Leach v. Daughterty,, 78 Cal. App. 83 (broker's certificate under the Corporate Securities Act); Riley v. Chambers, 181 Cal. 589 (license of real estate broker); Gundling v. Chicago, 177 U. S. 183 (license for sale of cigarettes).) These decisions, in my judgment, have no application to legislation laying down licensing requirements for the business of soliciting funds for charitable purposes.

A recent controversy in Michigan presented substantially the same question as is now before this court. An ordina-ce which prohibited the solicitation of contributions or the sale of goods "the proceeds from which, or any part thereof, are to be used for any so-called charitable purpose" without a written permit to be granted by the city manager, when it appeared, after investigation and report by a police officer, "that the charity is a worthy one" and

that the applicants for a permit "are fit and responsible parties", was held to violate the provisions of a State constitution prohibiting deprivation of life, liberty, or prop-
[fol. 217] erty without due process of law. "It is requisite to the validity of the ordinance", said the court, "that it should state 'a standard for the guidance' of the official who passes upon the application for the permit . . . The general and indefinite terms used in this ordinance wholly fail to comply with this requisite." (Hoyt Bros. Inc. v. Grand Rapids, supra, (128 A. L. R. 1363.)

Turning to the other provision of the Los Angeles Municipal Code which is in controversy, although, generally, speaking, the business activities of a religious organization come within the scope of regulations tending to protect the morals, safety or general welfare of the public, section 24.01 relating to dealers in second-hand goods is also unconstitutional for the reason that it sets no standard to which an applicant for a license must conform. To carry on the business of a "secondhand dealer", one must "file an application in writing with the Board (of Police Commissioners) specifying by street and number the place where such proposed business is proposed to be conducted or carried on; . . . The application shall be signed by the applicant and shall contain his residence address. Upon receipt of such application the Board shall cause to be investigated the business of the applicant and location at which applicant proposes to engage in business as specified in said application. Thereafter the Board may issue a permit to the applicant which shall be effective for the remaining portion of the current year."

This enactment states no grounds justifying a denial of
[fol. 218] the application, specifies no time within which an investigation must be made, makes no provision for a hearing upon the application, and by the use of the word "may", impliedly allows the Board to grant or withhold official favor for any reason which whim or fancy may dictate. No standard of character or business responsibility is set for the guidance of the Board nor are there any qualifications specified for one desiring to deal in secondhand goods. Such legislation has uniformly been held not to measure up to the requirements of constitutional guarantees. (In re Dart, supra; Hewitt v. State Board of Medical Examiners, supra; Schaezlein v. Cabaniss, supra;

County of Los Angeles v. Hollywood Cemtery Assn., supra; Ex parte Sing Lee, supra; Yick Wo v. Hopkins, supra; Hoyt Bros. Inc. v. Grand Rapids, supra.)

Under these circumstances, in my opinion, as the right of The Grospel Army and those acting in its behalf to solicit contributions for either religious or charitable purposes is a property right, the unlawful interference with which will cause irreparable injury, the trial court properly enjoined the enforcement of the ordinances here challenged (Brock v. Superior Court, 12 Cal. 2d 605; Bueneman v. City of Santa Barbara, 8 Cal. 2d 405), and the judgment should be affirmed."

[fol. 219] In Supreme Court of California, in Bank

[Title omitted]

Order Denying Rehearing—Filed December 17, 1945

Respondent's petition for rehearing Denied. Edmonds, J.; Carter, J. and Schauer, J., voting for a rehearing. Dated Dec. 17, 1945.

Gibson, Chief Justice.

[File endorsement omitted.]

[fol. 220] In Supreme Court of California

[Title omitted]

Material Register of Actions Entries

August 23, 1943—Filed C. & R. Transcript—Appeal from Judgment.

September 21, 1943—Transferred to 2nd District Div.1.

March 9, 1944—Transferred to Supreme Court.

April 7, 1944—Ordered on bank calendar, L. A. May 9, 1944.

May 9, 1944—Cause called and continued to May 11, 1944.

May 11, 1944—Cause called—On consent of counsel, cause submitted on briefs on file.

November 20, 1945: The judgment is reversed. Traynor, J.

We concur: Shenk, J.; Spence, J.; Gibson, C.J.
I dissent: Carter, J.
I concur: Schauer, J.
I dissent: Edmonds, J.
December 10, 1945: Filed Respondent's petition for rehearing.
December 17, 1945: Rehearing denied. (Edmonds, J.; Carter, J.; and Schauer, J., voting for rehearing.)
December 21, 1945—Remittitur issued.

[fols. 221-224] IN THE SUPREME COURT OF CALIFORNIA

Los Angeles

No. 18808

(Superior Court No. 470,368)

THE GOSPEL ARMY, a Corporation, Plaintiff, Respondent,

vs.

THE CITY OF LOS ANGELES, a Municipal Corporation, The Board of Social Service Commissioners, Department of Social Service, and Dan O. Hoye, City Controller, Defendants, Appellants

On Appeal from the Superior Court in and for the County of Los Angeles

JUDGMENT—Filed November 20, 1945

The above entitled cause having been heretofore fully argued, and submitted and taken under advisement, and all and singular the law and premises having been fully considered,

It Is Ordered, Adjudged, and Decreed by the Court that the Judgment of the Superior Court in and for the County of Los Angeles in the above entitled cause, be and the same is hereby reversed.

Appellant to recover costs on appeal.

I, A. V. Haskell, Clerk of the Supreme Court of the State of California, do hereby certify that the foregoing is a true copy of an original judgment entered in the above entitled

cause on the 20th day of November, 1945, and now remaining of record in my office.

Witness my hand and the seal of the Court, affixed at my office, this 21st day of December, A. D. 1945. A. V. Haskell, Clerk, by L. F. White, Deputy. (Seal.)

[fol. 225] IN THE SUPREME COURT OF CALIFORNIA

PETITION FOR APPEAL—Filed February 26, 1946

Aggrieved by the decision of the Supreme Court of the State of California duly entered and made final on the 17th day of December, 1945, reversing the judgment of the lower state court in favor of petitioner, and claiming that rights guaranteed by the 14th Amendment to the Constitution of the United States are thereby violated, petitioner, The Gospel Army, hereby prays that an appeal be allowed to the Supreme Court of the United States.

Robert H. Wallis, Attorney for Petitioner. The Gospel Army, by Ruth Colbert, Vice President.

[fol. 226] IN SUPREME COURT OF CALIFORNIA

ASSIGNMENT OF ERRORS

The said Appellant, The Gospel Army, assigns the following errors in the record and proceedings in said case:

I

The Supreme Court of the State of California erred in its opinion, decision and judgment in the case of Gospel Army v. City of Los Angeles and others in holding that the "Charities and Relief" ordinance of said City is a valid exercise of the police power and is not, as applied to religious organizations, and especially to said Gospel Army, violative of the right to exercise freedom of religion, guaranteed by the Fourteenth Amendment to the Federal Constitution, and that it does not arbitrarily and unreasonably, and by its mere fiat, segregate all religious-charitable activities of such organization from the missionary, evangeli-

[fol. 227] cal and religious activities of such organizations,

and that it does not impose upon all religious-charitable activities of such organizations unreasonable, burdensome and time-consuming prior restraints.

II

The said Supreme Court erred in its opinion, decision and judgment in making determinations by disregarding and refusing to follow the rule that where the rights of freedom of the press or of religion conflict with other constitutional rights, the former occupy a preferred position and in all cases the Court must weigh the circumstances and appraise the reasons in support of the regulation of those rights, and consistently accorded to the regulations as written in the ordinance involved the presumption that they are warranted and that officers of the Department of Social Service and of the Board of Social Service Commissioners of said City and said Department and said Board will not abuse this authority conferred upon them and favor some and discriminate against others, although empowered to do so, and on that theory said opinion, decision and judgment holds that said Department automatically grants permits to solicit donations for charities when the applicant has complied with provisions prerequisite to the issuance of the permit or license, although no provision of said ordinance so requires or provides.

[fol. 228]

III

The Supreme Court of the State of California erred in its opinion, decision and judgment in said case in holding that said ordinance does not unreasonably, arbitrarily and unlawfully violate the equal protection of the laws clause of the Fourteenth Amendment to the Constitution of the United States to said Gospel Army, and to one of its solicitors, Mrs. Colbert, and to all religious organizations and solicitors situated similarly to said last-named parties, by its definition of the term "promoter" and by arbitrarily creating a class of solicitors designated as "promoters," and by exacting from such promoters higher fees for permits or licenses than are required of other solicitors, and by requiring the execution of a prohibitively high indemnity bond by promoters whereas no bond is required of other solicitors, and by there being no reasonable, logical or substantial basis for such distinctions.

IV

The said Supreme Court erred in its opinion, decision and judgment in said case in holding that said ordinance requires the Department of Social Service to issue the permit or Information Card, which all solicitors must have before soliciting donations for charities, upon the filing of the information required by said Department and the payment of 4¢ for each card, although said opinion recognizes that no express provision of said ordinance so provides, and al-
[fol. 229] though, as shown by testimony of the administrative employee of said Department it claims the right under said ordinance to at any time *to* refuse to issue Information Cards.

V

The said Supreme Court erred in its opinion, decision and judgment in holding that the provisions of said Section 44.02 of said ordinance which authorize said Board to "recall every such Information Card and amend or correct the same" and require the person who files it, or association on whose behalf the Notice of Intention was filed, to return said card and to present the recalled Information Card within 48 hours after receiving notice to return it, are reasonable and valid and not burdensome, and said Supreme Court erred in failing and refusing to hold that said provisions are unreasonably time-consuming and burdensome and infringe the rights of solicitors of donations and associations on whose behalf such solicitations are made to the exercise of the right of freedom of religion and constitute prior restraints upon the exercise of such rights, and of the right to engage in charitable activities, as guaranteed by the Fourteenth Amendment to the Federal Constitution.

VI

The said Supreme Court erred in its opinion, decision and judgment in said case in holding that Section 44.02 of said ordinance is reasonable, not burdensome and valid in empowering the Board to publish the results of investiga-
[fol. 230] tions by the Department pertaining to applications for permits to solicit and the allegations of "Notice of Intention" and to give publicity to any such results by such means as may be deemed best to reach the general public, and persons interested, and said opinion, decision and

judgment erred in failing and refusing to hold that said provisions permit unreasonable delays and constitute prohibitive burdens upon the exercise of religious and charitable activities and the freedom of religion and the right to be charitable, in contravention of the due process clause of the Federal Constitution.

VII

The said Supreme Court erred in its opinion, decision and judgment in said case in holding valid and constitutional the provision in Section 44.03 of said ordinance which provides that in issuing an Information Card (permit to solicit) said Department has power to show in said card that such issuance is "not an endorsement" or to state that "they endorse such charitable association," and said Supreme Court erred in failing and refusing to hold that said provision is a nullity on the ground that it delegates to the Department power to endorse or refuse to endorse, arbitrarily and capriciously, since no reasonable standard is provided to guide and measure its decision, and thus violates the due process clause of the Federal Constitution; also, on the ground that said enactment creates two classes [fol. 231] of permits and charitable associations, the endorsed and the unendorsed, and arbitrarily and unreasonably denies to the latter the privileges and protection which it grants to the former, in violation of the equal protection of the laws clause of the Fourteenth Amendment to the Federal Constitution.

VIII

Said Supreme Court erred in its opinion, decision and judgment in said case in holding valid and constitutional the provisions of said ordinance in Section 44.03 thereof, which provides that upon the filing of a Notice of Intention (petition for permit) to solicit with said Department, before acting on said petition, said Department is authorized to investigate the allegations of said petition, or Notice of Intention, and to "have access to and inspect and make copies of all books, records and papers of such person, by or on whose behalf any solicitation is to be made," and said Supreme Court so erred, as aforesaid, in failing and refusing to hold that each and all of said actions so authorized to be taken by said Department are unreasonable

and constitute arbitrary and onerous limitations upon the right to solicit for charity, and are prior restraints upon the exercise of the right of freedom of religion, and contravene the Fourteenth Amendment to the Federal Constitution upon both of these grounds.

IX

Said Supreme Court erred in its opinion, decision and [fol. 232] judgment in said case in holding valid the provision in Section 44.03 of said ordinance which authorizes the said Department, in issuing to an applicant for a permit to solicit, called therein an Information Card, to set forth therein information secured by independent investigation concerning the applicant, of which he has not been apprized or had opportunity to refute or explain which "in the opinion of the Board" shall be of assistance to the public to determine the nature and worthiness of the purpose for which the solicitation is made," and said Court erred in its opinion, decision and judgment in failing and refusing to hold that said provision is not void and does not violate the due process clause of the Federal Constitution for each of the following reasons:

1. That it empowers the defendant Board and Department to deprive the applicant of a property right and property without due process of law;

2. That it provides no guide or standard by which said Board and said Department shall determine what information will be of assistance to the public to determine the nature and worthiness of the charitable purpose for which the solicitation is to be made;

3. That it constitutes an unreasonable and burdensome previous restraint upon the exercise of the right to solicit for charitable purposes;

4. That as applied to solicitations which are an integral [fol. 233] part and in furtherance of the purely religious activities of a religious organization, and as applied to the Gospel Army and its solicitors, it constitutes a prohibitive prior restraint upon the exercise of the right of freedom of religion.

X

Said Supreme Court erred in its opinion, decision and judgment in said case in holding to be valid and not violative

of the right of religious freedom or of the right to engage in charitable activities the provisions of Section 44.05 of said ordinance, which provide as follows:

"No person shall solicit, nor shall any officers or member of any association authorize any person to solicit, any contribution for any charitable purpose unless, within the fiscal year of the City in which such solicitation is made and a least ten (10) days prior to the beginning of such solicitation, there shall have been filed with the Department, on a form furnished by said Department, by such person or association upon whose behalf the solicitation is made, written Notice of Intention to solicit such contribution, which notice shall contain complete information as follows:

"(a) The purpose of the solicitation and use of the contribution to be solicited;

"(b) A specific statement, supported by reasons and, if available, figures, showing the need for the [fol. 234] contribution proposed to be solicited;

"(c) The character of such solicitation and how it will be made or conducted;

"(d) The expenses of the solicitation, including salaries and other items, if any, regardless of from what funds such expenses are payable;

"(e) What portion of the contributions collected as a result of the solicitation will remain available for application to the specific purposes declared in the Notice of Intention as the object of the solicitations;

"(f) A specific statement of all contributions collected or received by such person or association within the calendar year immediately preceding the filing of such Notice of Intention. The expenditures or use made of such contributions, together with the names and addresses of all persons or associations receiving salaries, wages, compensation, commissions or emoluments from such contributions, and the respective amounts thereof;

"(g) The names and addresses of the officers and directors of any such association for which the solicitation is proposed to be made;

"(h) A copy of the resolution, if any, of any such association authorizing such solicitation, certified to as a true copy of the original of such resolution by the officer of such association having charge of the records thereof;

[fol. 235] "(i) A statement that the signers of such Notice have read and are familiar with the provisions of this Article and you will require all solicitors engaged in such solicitation to read and be familiar with all sections of this Article prior to making any such solicitation."

Said Supreme Court erred in its opinion, decision and judgment in failing and refusing to hold that each of the provisions of this section constitute a prior restraing upon the exercise of the right of religious freedom, and of the right to engage in charitable activities, and to hold that said prior restraints are inhibited by the Fourteenth Amendment to the Federal Constitution; said Court erred in failing and refusing to hold that, as applied to the Gospel Army and to its solicitors and their solicitations, each and all of said provisions are unreasonable and burdensome and time-consuming previous restraints upon the exercise by each of them of the irghts above set forth and violations of the said Fourteenth Amendment.

Said Supreme Court also erred in holding that Section 44.05, as applied to solicitations for charity by religious organizations, and especially to said Gospel Army, where such solicitations are used in spreading religious doctrines and as an integral part of such religious activities, said section does not create prior restraints upon the exergise of [fol. 236] the right of religious freedom in violation of said Fourteenth Amendment.

XI

Said Supreme Court erred in its opinion, decision and judgment in holding adequate and valid the provision contained in Section 44.06 of said ordinance, which empowers said Department to decide that a Notice of Intention (petition for permit) "does not disclose sufficient information for the public concerning the facts required by Section 44.05 to be set forth or concerning the person or association making such solicitation or on whose behalf such solicitation

is made," "and said Supreme Court so erred in failing and refusing to hold that said provision is void and violates the Fourteenth Amendment to the Federal Constitution, in that it empowers the Department to act and decide captiously and arbitrarily and unreasonably, and provides no basis or standard to control the decision involved in said provision.

XII

Said Supreme Court erred in its opinion, decision and judgment in holding that all of the provisions of Section 44.06 of said ordinance are valid and not burdensome, which provisions require that the applicant for permission to solicit "must file with the Notice of Intention a statement of any agreement made with any agent, solicitor, promoter . . . of such solicitation, together with a copy of each agreement, which may be in writing, and, if a change is [fol. 237] made in such agreement, applicant must within twenty-four hours file a true copy of it with the Department, and must, if requested by the Department, provide any further information which the Board may require, and, if required by the Department, the Notice of Intention and additional information must be signed by the person intending to make such solicitation and by two officers of the association."

Said Supreme Court erred, as above set forth, and in failing and refusing to hold that said provisions are violative of the Fourteenth Amendment to the Federal Constitution and of the right of those who seek to engage in charitable or religious activities, because said provisions each create and constitute a burdensome bar and a previous restraint upon the exercise of such persons to freely engage in both or either of said activities.

XIII

Said Supreme Court erred in its opinion, decision and judgment in holding that the provisions of Section 44.12 of said ordinance are reasonable, valid and constitutional and not burdensome, as applied to solicitors for charity, whether the solicitation be for charity alone or for charity in furtherance of religion, which provisions require that all solicitors must read the Information Card to any person solicited for donations or present it to such person and

"allow him sufficient opportunity to read the same before accepting any contributions so solicited," and said [fol. 238] Supreme Court erred in its opinion, decision and judgment in failing and refusing to hold that said provisions are so burdensome as to be prohibitive of solicitations, and are arbitrary and unreasonable prior restraints upon the exercise of the right of freedom of religion, and especially of the exercise of said right by the Gospel Army and all of its solicitors; also of their rights to engage in charitable activities, and, hence, that said provisions contravene the Fourteenth Amendment to the Federal Constitution.

XIV

The said Supreme Court erred in holding that the provisions of Section 44.14 of said ordinance are not burdensome and are reasonable, valid and constitutional, which provisions require that solicitors file with the Department a report to said Department, stating the contributions secured, "in detail all expenses of or connected with such solicitation," "exactly," for what uses and the manner in which all contributions were disbursed, and that the statement be signed by the persons or associations obligated to file the Notice of Intention, and said Supreme Court erred in not holding and in refusing to hold that each of said requirements is burdensome and unreasonable and a prior restraint upon the freedom of religion of the Gospel Army and its solicitors and creates and constitutes a prohibited prior restraint upon the exercise of the right of religious freedom and the right to be charitable of said parties, and of all others similarly situated.

[fol. 239] XV

The said Supreme Court in its opinion, decision and judgment erred in holding that the provisions in respect to receipts to be given for donations and the contents thereof in Section 44.15 of said ordinance are not burdensome and are reasonable, valid and constitutional; said pertinent provisions are:

> "No person shall solicit any contribution for any charitable purpose unless such person shall tender to each person making such contribution a written receipt signed by the solicitor which contains in addition

to a description of the amount and kind of the contribution, substantially the following matters:

"(a) The name of the association, if any, in whose name or upon whose behalf the solicitation is made.

"(b) A statement as to whether the contribution solicited is to be applied for the general purposes of such association, if any, or for specific purposes, and if for specific purpose the nature thereof shall be clearly stated.

"(c) A statement that the Information Card, issued by the Department, was presented to the person making the contribution for his perusal prior to receipt by the solicitor of the contribution receipted for."

[fol. 240]

XVI

Said Supreme Court, by its opinion, decision and judgment erred in failing and refusing to hold that the foregoing provisions do not constitute a prohibitive prior restraint upon the exercise of the right of religious freedom, and upon the exercise of that right and the right to dispense charities by the Gospel Army and its solicitors and that therefore said provisions are violative of the Federal Constitution, amendment fourteen thereof.

XVII

Said Supreme Court, by its opinion, decision and judgment erred in holding reasonable, valid and constitutional the provision contained in Section 44.16 of said ordinance which segregates solicitations for charitable purposes from solicitations for evangelical, missionary or religious purposes and severs from the latter class all solicitations whose purposes are not purely evangelistic, missionary or religious even though they are in furtherance and an integral part of religion and other religious activities, and said Supreme Court, in its opinion, decision and judgment erred in failing and refusing to hold that said provision is arbitrary, unreasonable and discriminatory, in that it attempts by law to remove activities which in fact are religious from the realm of religion and from the protection [fol. 241] of the 14th amendment to the Federal Constitution and its guaranty of freedom of religion.

XVIII

Said Supreme Court, by its opinion, decision and judgment erred in upholding as valid, constitutional and not burdensome or unreasonable the provision of Section 44.16 of said Ordinance which authorizes the Board of Social Service Commissioners of said defendant City to investigate the matter of solicitations for solely evangelical, missionary or religious purposes and if "in the opinion of the Board" such solicitation "is calculated to give or may give the impression to the person or persons solicited in any such solicitation or to the public that the purpose of such solicitation is either in whole or in part charitable, then the Board, if in its opinion the public interest will be subserved thereby, shall investigate the matter of such solicitation and give publicity to its findings thereon in such manner as it may deem best to advise the public of the facts of the case."

XIX

Said Supreme Court, by its opinion, decision and judgment, erred in failing and refusing to hold that the foregoing provision is not a direct violation of the right of freedom of religion and of its exercise, and that it does not permit and create a prior restraint upon and interference with [fol. 242] the exercise of said right in violation of the 14th amendment to the Federal Constitution.

XX

Said Supreme Court, by its opinion, decision and judgment, erred in holding that said Section 44.16 does not violate the rights of religious freedom and the right of property guaranteed by said 14th amendment, of religious organizations and especially such rights of the Gospel Army and of its solicitors and promoters, in that it excludes from the exemption solicitations of money and goods if any part thereof is to be applied to charities incident to religious activities or to the compensation and support of the solicitor, in that said section of the Ordinance provides that solicitations "made solely for evangelical, missionary or religious purposes" are exempt from all other provisions of the ordinance which are challenged herein as violative of petitioner's rights, and by this provision the Gospel Army and its solicitors and promoter who seek donations for charity are also arbitrarily denied the equal protection of the laws

under said 14th amendment. Section 44.16 of said Ordinance empowers the Board to investigate solicitations for evangelical, charitable and religious purposes and to publicize its "findings" concerning such solicitations, "if in its opinion the public interest will be subserved thereby."

XXI

[fol. 243] Said Supreme Court, by its opinion, decision and judgment in this case, erred in holding that said provision does not vest in the Board unbridled power to arbitrarily and partially nullify the efforts of solicitors and promoters for religious purposes and organizations and to thereby infringe the rights of religious freedom and the acquirement of property in violation of the said 14th amdnement, of promoters and other solicitors for such organizations and purposes, and especially, such rights of the Gospel Army and of its promoter and other solicitors.

XXII

Said Supreme Court, by its opinion, decision and judgment in this case, erred in holding that the provision of Section 44.19 of said ordinance which authorizes the Board to require applicants for license to solicit as promoters to furnish "such information as may be required by the Board" is reasonable, not burdensome or vague in its delegation of power and is valid and constitutional, and it erred in failing and refusing to hold and adjudge that said provision constitutes a burdensome prior restraint upon the exercise of the rights of freedom of religion and the right to dispense charity in contravention of the due process clause of the Federal Constitution and is also violative of that clause because it gives the Board unrestricted power to [fol. 244] make requirements prerequisite to granting a promoter's license of an unreasonable, arbitrary and capricious character, and to deny such licenses if such requirements are not met; and, said Supreme Court erred in failing and refusing to determine, hold, and adjudge that the foregoing provisions are harsh, unreasonable, and burdensome as applied to promoter-solicitors for any charities and especially as applied to those who solicit for a religious organization whose charitable activities are in furtherance of the spreading of its religious beliefs and doctrines, and in failing and refusing to hold and adjudge that as so ap-

plied and as applied to said Gospel Army and its promoter-solicitor said provisions are prohibitive prior restraints upon the exercise of the right to dispense charity and of the right to exercise freedom of religion.

XXIII

Said Supreme Court, by its opinion, decision and judgment in this case, erred in holding that provisions in Section 44.19(2)(a), (b) and (c) and subsection 3, are not burdensome and are reasonable, valid and constitutional. Said provisions are: "No promoter shall in any manner whatsoever, solicit within the City of Los Angeles any contribution for any actual or purported charitable use, purpose, association, corporation or institution without a license from the Board so to do.

"(2) Application.

[fol. 245] "To obtain such license, such promoter shall make and file with the Board an application therefor in writing. In such application, the applicant shall set forth, in addition to such information as may be required by the Board:

"(a) The name and address of the applicant, and if such applicant be a corporation, the name and address of each of its managing officers and agents, and, if it be an unincorporated association, firm or partnership, the name and address of each member of such unincorporated association, firm or partnership;

"(b) A succinct statement of facts showing that the applicant, if not a corporation or an unincorporated firm, association or partnership, is of good character and reputation, or if the applicant be a corporation that each of its managing officers and agents is of good character and reputation, or if the applicant be an unincorporated association, firm or partnership, that each of its members is of good character and reputation.

"(c) The general plan, character and method in or by which applicant proposes to conduct its or his business as a promoter." (Gospel Army Appeal, p. 16)

Subsection (3) requires the applicant to post a bond in the sum of $2000.00, to insure payment of any "direct

[fol. 246] pecuniary loss sustained through any theft on the part of the principal."

XXIV

Said Supreme Court, by its opinion, decision and judgment in this case, erred in upholding Section 44.19, subsection (4) which requires the applicant for a promoter's license to pay a fee of $25.00 to said Board of Social Service Commissioners, and Subsection (5) which authorizes said Board to make such further investigation of the applicant and of "his affairs" as the "Board may deem advisable", and "if from such examination the Board shall be satisfied that the applicant is of good character and reputation", has "sufficient financial responsibility to carry out obligations incident to any solicitation such as applicant may make"; that his statements in his "application are true", etc., the application shall be granted. "Otherwise, the Board shall refuse to issue the license."

Said Supreme Court erred in holding and adjudging that the foregoing provisions are valid and constitutional and are not burdensome but are reasonable as applied to promoter-solicitors for charities and for religious organizations, donations to which are used in furtherance of their religious activities and especially to said Gospel Army and its promotor-solicitor Mrs. Colbert.

XXV

Said Supreme Court, by its opinion, decision and judg-
[fol. 247] ment in this case, erred in holding that the provision of Section 44.19(3) which empowers the Board to make such investigation of the applicant and "his affairs" "as they deem advisable" and from such examination to base their determination of his qualifications to be granted a license, is reasonable and not vague in its delegation of powers and standards for their use and it erred in failing and refusing to hold and adjudge that said provision is not violative of due process under the 14th amendment to the Federal Constitution because it fixes no standard and authorizes said Board to make its decision upon matters wholly irrelevant to the purpose of the inquiry and to discriminate against some and favor others.

XXVI

Subdivision 5 of Section 44.19 provides that the Board may examine the application and investigate the applicant and his affairs as the Board deems advisable and shall issue a license "to solicit as a promoter" contributions within said city if the Board is satisfied that the applicant is of good character and reputation and has sufficient financial responsibility to carry out the obligations incident to any solicitation to be made as such promoter, etc.

Said Supreme Court, by its opinion, decision and judgment in this case, erred in holding that said provisions can be made to apply to a solicitor of donations for a religious [fol. 248] organization, which donations are to be used and are used in furtherance of the religious activities of said organization, including its charities, without being an infringement of the said 14th amendment and the right of freedom of religion and the inhibitions therein against prior restraints upon the exercise thereof.

XXVII

Said Supreme Court, by its opinion, decision and judgment in this case, erred in holding that the provision in Section 44.01 of said ordinance which states: "No person who is a bona fide paid officer or employee of a social service agency endorsed by the Board of Social Service Commissioners of the City of Los Angeles shall be considered a promoter within the meaning of this article" is a reasonable classification and in holding that it is valid and constitutional, since said provision arbitrarily, capriciously and unreasonably exempts employees and officers of endorsed agencies from the necessity of securing permits and licenses to solicit, and from all of the burdensome and time-consuming requirements under which other solicitors and promoters are compelled to solicit and said Supreme Court erred in holding that said exempting provision is not unreasonably discriminatory and does not deny the equal protection of the laws to charitable organizations [fol. 249] not endorsed by said Board and to their solicitors and promoters, in contravention of the 14th amendment to the Constitution of the United States.

XXVIII

The Supreme Court of the State of California, in its opinion, decision and judgment, erred in holding that the

definition of the term "promoter" in Section 44.01 of said ordinance and the provisions contained in Section 44.19 thereof pertaining to promoters, do not create and constitute an arbitrary and unreasonable classification of solicitors, and said Court erred in holding that the classification thus provided is reasonable and the standards provided are adequate, and said Court further erred in failing and refusing to hold that, since no substantial difference exists between said definition of "promoters" and the definition of "solicitors" contained in Section 44.01 of said ordinance, and since the provisions of Section 44.19 concerning promoters require promoters to obtain a "license" and to pay a substantial fee therefor, and to provide a bond of $2000.00, and to submit to unrestricted investigation by said Board, and the mandate of Section 44.19 by which promoters must file with said Board "such information as may be required," and to submit to denial of a license upon a mere exercise of the Board's whimsy, said definition and classification of promoters as distinguished from other solicitors is arbitrary and unreasonable [fol. 250] and denies to promoters and their employees the equal protection of the laws as guaranteed by the 14th amendment to the Federal Constitution.

XXIX

The Supreme Court of the State of California, in its opinion, decision and judgment, erred in holding that certain provisions of Sections 44.03, 44.05, 44.06 and 44.12 of said ordinance, collectively and read together, are valid, constitutional and reasonable and are not burdensome as applied to charitable associations and religious organization, and their solicitors and promoters who solicit donations of money and articles of personal property for charitable or religious-charitable purposes.

Said Section 44.12 provides that the solicitor shall read his Information Card "to the person solicited" or "present to said person for his perusal," and allow "him sufficient opportunity to read the same before accepting any contribution."

Since, pursuant to Sections 44.03, 44.05 and 44.06 of said ordinance, the contents of said Information Card, (permit or license), may be of unlimited volume and must, to comply with said last named sections be so comprehen-

sive as to render the requirements of Section 44.12 prohibitive of public solicitations of donations for money or personal property to be used in furtherance of religion, said Court erred in its opinion, decision and judgment in [fol. 251] failing and refusing to hold that each of said provisions, all, especially all of them together, create a system of procedure which constitutes an unreasonable, burdensome and prohibitive prior restraint upon the exercise by the Gospel Army and its promoter and other solicitors in the rights of religious freedom and the free exercise thereof, and the right to dispense charity and to acquire, possess and dispose of property as guaranteed by the 14th Amendment to the Federal Constitution.

XXX

Section 44.06 of said ordinance authorizes said Board may require the applicant for permission to solicit to file, in writing, within 48 hours, "additional information" as to the matters enumerated in Section 44.05, "whenever, in the opinion of the Board the 'Notice of Intention' does not disclose sufficient information for the public" concerning such facts.

Said Supreme Court erred in holding that this section does not authorize said Board to protract its investigation without limit and that both sections, 44.05 and 44.06 do not extend the range of investigation unreasonably and that they do not constitute prior restraints upon the exercise of freedom of religion in violation of said 14th amendment, and that as applied to petitioner said sections have not constituted such restraints upon petitioner's said [fol. 252] right, and of its constitutional right under the due process clause of the Federal Constitution to be charitable and dispense charity.

Said Supreme Court, in its opinion, decision and judgment erred in that, as to each of the foregoing Assignments of Error, said Court failed and refused to hold that the error assigned has violated the right of said Gospel Army, as created and guaranteed by the 14th Amendment to the Constitution of the United States, to freedom of religion and to the free exercise thereof and the right to dispense charity and to receive donations for charitable purposes through its promoter and solicitor, whether such activities be in furtherance of religion alone, or for charity alone, or for both.

For which errors as above assigned the appellant The Gospel Army prays that said judgment of the Supreme Court of the State of California dated November 20, 1945 and finally entered and made, by the denial of appellant's petition for rehearing, on December 17, 1945, reversing the judgment of the trial court, be reversed, and that a judgment be rendered in favor of appellant and for costs.

The Gospel Army, by Ruth Colbert, Vice President, Appellant. Robert H. Wallis, Attorney for Apellant.

[fol. 253] [File endorsement omitted.]

[fol. 254] IN THE SUPREME COURT OF CALIFORNIA

[Title omitted]

ORDER ALLOWING APPEAL—Filed February 26, 1946

Appellant, The Gospel Army, having prayed for allowance of appeal by it to the Supreme Court of the United States from the judgment made and rendered in the above entitled cause in and by the Supreme Court of the State of California on the 20th day of November, 1945, and finally entered upon denial of the petition for rehearing by The Gospel Army, on the 17th day of December, 1945, and from each and every part thereof, and having presented and filed its petition for appeal, Jurisdictional Statement, Assignments of Errors and prayer for reversal, pursuant to the applicable statutes and rules of the Supreme Court of the United States;

It is now Ordered that an appeal be allowed, and the same is hereby allowed in the above entitled case to the [fols. 255-256] Supreme Court of the United States from the Supreme Court of the State of California, as provided by law; and

It Is Further Ordered that the clerk of the Supreme Court of the State of California shall have prepared and prepare and certify a transcript of the entire record and proceedings, including the evidence and the judgment and this order in said case and transmit the same to the Supreme Court of the United States at Washington, D. C., so

that the Supreme Court of the United States and the Clerk thereof shall have the same within sixty days from this date.

Dated February 25, 1946.

Phil S. Gibson, Chief Justice of the Supreme Court of the State of California.

[fols. 257-259] Citation in usual form showing service on Ray L. Chesebro, filed February 26, 1946, omitted in printing.

[fols. 260-263] Bond on appeal for $500.00 approved and filed February 26, 1946, omitted in printing.

[fols. 264-265] IN THE SUPREME COURT OF CALIFORNIA

[Title omitted]

ORDER ENLARGING THE TIME TO DOCKET AND FILE THE RECORD ON APPEAL—Filed April 24, 1946

Upon good cause being shown in the Affidavit of Robert H. Wallis, attorney for the Appellant, The Gospel Army, the time to file the record and return date of said citation is enlarged for a period of five (5) days, ending May 2, 1946.

Signed and dated this 24th day of April, 1946.

Gibson, Chief Justice of the Supreme Court of the State of California.

[File endorsement omitted.]

[fol. 266] IN THE SUPREME COURT OF CALIFORNIA

[Title omitted]

AFFIDAVIT OF ROBERT H. WALLIS

STATE OF CALIFORNIA,
County of Los Angeles, ss:

ROBERT H. WAL[illegible] being first duly sworn, deposes and says:

That he is the attorney of record for The Gospel Army in the above entitled matter, and that on the 25th day of February, 1946, citation was signed by the Chief Justice of the

Supreme Court of the State of California, being returnable sixty (60) days thereafter, which time expires April 26, 1946, the time required under the rules of the Supreme Court of the United States to docket said appeal.

Affiant further says that the original record in this matter was forwarded by the Clerk of the Supreme Court of California to the office of said court in Los Angeles, California, for the purpose of permitting affiant to have a copy of the transcript of the testimony made to be included in the record on appeal; that thereafter, and about ten (10) days prior [fol. 267] to the execution of this affidavit, affiant numbered and prepared the record for transmission to the office of the Supreme Court of California in San Francisco with the exception of the index, as required by the rules of the Supreme Court of the United States; that said affiant made arrangements for the said index to be prepared and delivered to the office of the Clerk of the Supreme Court in Los Angeles, California, but through an inadvertence and misunderstanding, said index was not delivered until April 22, 1946, and the said record on appeal has been held in Los Angeles awaiting receipt of said index.

That since preparing the aforesaid record as mentioned herein, affiant has been continually engaged in six hearings before the Contractors' Commission, and did not learn until the 22nd day of April, 1946, that said index had not been filed.

That affiant is informed and believes that said complete record is now in the office of the Clerk of the Supreme Court of the State of California at its office in San Francisco, California, but will not reach the office of the Clerk of the Supreme Court of the United States within the 60 day period, which expires on April 26, 1946, and that an enlargement of said return day of said citation is necessary.

Robert H. Wallis.

Subscribed and sworn to before me this 23rd day of April, 1946. I, A. Merrill, Notary Public in and for said County and State. My commission expires November 25, 1947.

[fol. 268] [File endorsement omitted.]

[fol. 269] IN THE SUPREME COURT OF CALIFORNIA

[Title omitted]

PRAECIPE FOR TRANSCRIPT OF RECORD—Filed February 26, 1946

To the Clerk of the Supreme Court of the State of California:

You are requested to prepare the following record on appeal to the Supreme Court of the United States in the above entitled case:

1. The amended complaint filed in the Superior Court.
2. The Defendant's answer to plaintiff's amended complaint.
3. Findings of fact and conclusions of law of the trial court.
4. The judgment of the Superior Court.
5. The Reporter's Transcript of the evidence submitted and all proceedings in the trial.

. . . . . .

[fol. 270] 9. Order of the Supreme Court transferring the appeal to the Supreme Court.
10. The opinion of the Supreme Court (majority opinion).
11. Dissenting opinion of Justice Carter, concurred in by Justice Schauer.
12. Dissenting opinion of Justice Edmonds.

. . . . . .

14. Order denying rehearing.
15. Minutes of the Supreme Court of California in said case.
16. Remittitur.
17. Petition for allowances of appeal.
18. Statement of jurisdiction on appeal.
19. Assignment of errors.
20. Prayer for reversal.
21. Order allowing appeal.

. . . . . .

24. Citation and proof of service thereof.
25. The Praecipe.
26. Proof of service on appellees of copy of petition for [fol. 271] allowance of appeal, jurisdictional statement, assignment of errors and notice to appellees of their right to make opposition to jurisdictional statement or file motion to dismiss or affirm with Clerk of Court possessed of the Record.
27. Copy of Cost Bond.

Attention is called to Subdivision 3 of Rule 10 of the United States Supreme Court which reads:

> "No case will be heard until a record, containing in itself, and not by reference, all papers, exhibits, depositions, or other proceedings which are necessary to the hearing, shall be filed."

Compliance with rule is requested.

Robert H. Wallis, Attorney for Appellant, The Gospel Army.

[fols. 272-273] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 274] IN THE SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS AND DESIGNATION RE RECORD—Filed May 23, 1946

Pursuant to Rule 13, subdivision 9 of the Revised Rules of the above entitled court, appellant files with the Clerk of said Court its statement of points which it intends to rely upon; its designation of those parts of the record which it thinks are unnecessary for the consideration thereof, together with proof of service of said statement and designation on appellees, as follows:

Points Upon Which Appellant Intends to Rely are:

1. The Charities and Relief Ordinance of the City of Los Angeles (No. 77,000), as a whole is violative of the Fourteenth Amendment to the Constitution of the United [fol. 275] States in that the plan and purpose therein erected, by numerous sections and provisions, so restrains and conditions the exercise of the right of religious free-

dom as to render such exercise impossible by any individual or religious organization, unless and until such organization shall have been approved by said City's Board of Social Service Commissioners and that said ordinance authorizes said Board to approve or refuse to approve any such organization arbitrarily, capriciously, unreasonably and upon the mere whimsy of its members and it provides no rule or standard by which such decision shall be governed.

2. Said ordinance violates the right of freedom of religion and the exercise thereof as guaranteed by said Fourteenth Amendment in its immunities or privileges clause, in that it arbitrarily segregates and classes and regulates as purely secular an integral activity and element of religion and the exercise thereof, to wit, the securing and dispensing of money and goods charitably, in that said ordinance empowers its administrative Charities and Relief Board of Commissioners to determine by standards to be established by said Board and not otherwise, whether the charities being, or to be, dispensed by any person or religious organization is a part of his or its religious activities.

[fol. 276] 3. Said Board has established such standard and has ruled that if any part of the monies or articles which are donated to be used for religious or charitable purposes are given to colporteurs or to other solicitors of the organization for whom they were solicited to pay such colporteurs' expenses such activities are not religious, and appellant will contend that this standard and rule is unreasonable, arbitrary and an infringement of the privileges or immunities clause and the due process clause of said Fourteenth Amendment.

4. Dispensing of charity is an integral part of religion and that religion cannot be segregated into two segments, one, the preaching of the gospel and the other, practicing its teachings, among the most sacred and essential of which is charity, and said ordinance violates appellant's right to freedom of religion because it divorces its charities and the charities of all other religious organizations from the exposition and preaching of their religion, and is therefore null and void, as infringing the said Fourteenth Amendment's guaranty of freedom of religion.

Hence appellant will contend that in legal effect each provision of said ordinance, as applied to a religious organization and its colporteurs is intended to apply to their religious activities.

[fol. 277] 5. Even if the collection of money and goods to be dispensed as charities could be regarded and legally classed as a business, as said ordinance classes and treats said activity, said provisions are violative of the due process clause of the Federal Constitution in that they are unreasonable, unnecessarily burdensome, time-consuming and arbitrary.

6. The following, among others, are provisions of said ordinance, each of which creates unreasonable, time-consuming and oppressive prior restraints upon the exercise of the right of freedom of religion:

(a) Said ordinance requires churches and other religious organizations to maintain "a system of accounting whereby all donations to it and all disbursements made by it are entered upon the books of record of its treasurer or other financial officer" in order that solicitations in any form may be made in Los Angeles on behalf of religious activities by colporteurs or solicitors, if they receive any part of the donations as compensation; also as a prerequisite to such solicitation copies of such records must be supplied to the Board on its request.

(b) Said ordinance prohibits any solicitation for religious charities of money or goods unless the colporteur or solicitor shall have first obtained a license or permit from said administrative board.

[fol. 278] (c) For such license one class of colporteurs, (called solicitors), must pay a nominal fee and another class (called promoters), must pay a license fee of $25.00 and post a bond in the sum of $2,000.00.

(d) All such colporteurs or solicitors are required to file an application for license to solicit at least ten days prior to the date on which they intend to begin soliciting.

(e) Said application must be on a form furnished by said Board and must set forth information concern-

ing nine subjects, including a copy of a resolution of an organization which authorized the contemplated solicitation.

(f) Said ordinance authorizes said Board to require additional information upon any other subject and to repeat such requirement without limit as to time or subject matter, or the number of requests, and to captiously and arbitrarily refuse to issue a permit to the applicant.

(g) Said ordinance authorizes said Board to place in such license or permit, if issued, a statement that the solicitation is not approved and any other information which the Board considers might interest the public as to the matter involved, derived from its private investigation or otherwise secured.

(h) Said ordinance requires the solicitor to show or [fol. 279] read the contents of said permit to all persons solicited for donation, before accepting any donation; said contents would necessarily be voluminous and involved, since it contains the information provided in the application and whatever the Board sees fit to add, and it might well be derogatory to the cause and purpose of the solicitation for religious or charitable purposes.

(i) The solicitor must file a written report with said Board stating in detail all expenses connected with the solicitation and "exactly" for what uses and the manner in which all contributions were disbursed, which report must be signed by the solicitor and the Association, religious or secular, for which solicitations were made.

Appellant will contend that each and all of the foregoing provisions are unreasonable, oppressive, time-consuming, prior restraints upon the exercise of appellant's freedom of religion and hence violative of said Fourteenth Amendment, and also violative of the due process clause thereof and will make the same contention concerning other provisions of a similar character regulating the obtaining of licenses by solicitors designated as "promoters" by said ordinance, the procedure and conduct of promoters and reports required to be made by them.

[fol. 280] 7. Said ordinance repeatedly delegates to said City's administrative Board power to legislate by regulations without providing any standard by which said Board shall be governed, thus giving said Board power to act arbitrarily, capriciously and with discrimination against those who for any reason are in disfavor with its members and all such provisions are violative of the due process and equal protection of the laws clauses of said Fourteenth Amendment and said Board has exercised such unbridled powers and discriminated against appellant.

Examples of such provisions as to which the foregoing point will be argued are:

(a) Section 44.16 of said ordinance authorizes the Board in issuing a permit or license to make its own investigation of the applicant and the religious organization for whom such applicant would solicit, and "if in the opinion of the Board the public interest would be thereby subserved to give publicity to its findings in such manner as it may deem best to advise the public of the facts in the case," if "in the opinion of the Board" such solicitation "is calculated to give the impression that the same is" in whole or in part "for a charitable purpose."

Appellant will contend that these provisions empower said Board to nullify efforts by its solicitors or any soli-
[fol. 281] tors to secure donations in furtherance of religious or charitable activities and to discriminate against them.

(b) Concerning the class of solicitors called "promoters" the ordinance authorizes the administrative Board to require the applicant to furnish "such information as may be required by the Board." And in that behalf no standard or limitation is provided and the Board is empowered to deny such license if any of the above and many other requirements are not met.

(c) Said Board is authorized to make such investigation of the applicant and "his affairs" as "they may deem advisable," and to consider the results thereof in determining whether to issue or deny a license, and no provision is made for any hearing concerning matters so investigated and no standard as

to matters to be considered is provided to guide the Board in making its decision.

8. Certain provisions of said ordinance violate the equal protection of the laws clause of said Fourteenth Amendment and are arbitrarily and unreasonably discriminatory in that:

(a) Section 44.16 of said ordinance exempts from the provisions of said ordinance religious organiza-
[fol. 282] tions whose solicitations are "made purely for evangelical, missionary or religious purposes" but applies said provisions to such organizations if any part of such solicitations is for religio-charitable purposes.

(b) Said ordinance (Section 44.19), arbitrarily and unreasonably creates a special class of solicitors designated as "promoters", and imposes upon said class and the religious organization for which they solicit additional prior restraints and burdens not required of other solicitors, such as payment of a license fee of $25.00, filing a bond in the sum of $2000.00 to safeguard the public from fraud, the filing of long and involved statements and reports by the applicants and by said religious organizations, and the right of an administrative Board to revoke such license when it thinks best.

(c) That said ordinance (Sec. 44.01), arbitrarily and unreasonably excepts from said class of promoters those who are employed by a "social service agency endorsed by the Board of Social Service Commissioners" of said City, for giving of which endorsement no standard is provided by said ordinance.

(d) That said ordinance (Sec. 44.03), authorizes said City's administrative Board to "endorse" charitable organizations and to thereby relieve such organi-
[fol. 283] zations from all obligations and requirements pertaining to solicitors, thus denying to similar organizations the same immunities and privileges and such administrative Board is empowered to endorse or withhold its endorsement arbitrarily and without reason.

9. Certain provisions of said ordinance are violative of said Fourteenth Amendment because they take property

without due process of law from appellant and all others similarly situated in that appellant maintains a store through which donated articles and goods not dispensed as charities are sold, and the proceeds are used in appellant's religious activities, and said ordinance applies to said store its Junk Dealers and Second Hand Dealers regulations, which are unreasonable, burdensome and oppressive even as applied to junk and second hand dealers, but especially so as applied to a charitable or religious organization whose activities are not presumed to require regulation to prevent fraud.

Also, the above mentioned prior restraints upon the solicitation of money to be used in appellant's religious activities deprive appellant of property without due process of law in that their enforcement would compel appellant [fol. 284] to close said store and lose the income therefrom, as appellant will contend and expects to show.

10. As construed and applied by said administrative Board of said City of Los Angeles and officers thereof to and against appellant, each of the above named provisions of said ordinance is violative of said Fourteenth Amendment in the respects above set forth in that such administrators have declared and ruled that appellant is, and all of its religious activities pertaining to solicitation of money and goods are, for charitable purposes and are subject to said ordinance and all of its provisions, and have threatened to prosecute appellant and its solicitors, officers and agents should the latter fail to comply therewith in any respect.

11. Said ordinance attempts to exercise the police power but whenever the exercise of the police power conflicts with or violates constitutional right the latter must prevail.

12. As an exercise of the police power said ordinance is void because its purpose, to-wit, to prevent fraud, can be accomplished by the enforcement of state punitive laws which amply cover all frauds;

[fol. 285] It is void for the further reason that its provisions, above set forth, and others of the same type and import, are unreasonably and unecessarily burdensome, costly and time-consuming, and can accomplish only one purpose, namely, to prevent the annoyance to business men and citizens of solicitations for charitable and religious

causes, and to enable the City's administrative Board to confine such solicitations to a few favored charitable and religious associations and organizations.

13. Said ordinance in effect, and as construed and applied in this case, prohibits solicitations for charity or religion by any individual and by all associations and organizations except such as are approved by said administrative Board in the exercise of unrestricted and unbridled discretion. Where reasonable regulation suffices to accomplish the intended purpose prohibition is violative of the due process clause of the Fourteenth Amendment.

14. The right to collect money or goods and the right to freely dispense them for charitable purposes is, in itself, within the privileges or immunities clause of said Fourteenth Amendment, and said ordinance as a whole, its plan and purpose, and each of its regulatory sections create prior [fol. 286] restraints in conflict with said clause and which are so arbitrary, unreasonable and needlessly burdensome as to violate the due process clause of said amendment in that they singly and collectively empower said administrative Board to hinder and prevent the acquirement of property or the disposition of such property upon unreasonable grounds based on information acquired and kept in secrecy without affording the charitable person or organization opportunity to be heard in opposition to such procedure and actions.

Designation of Parts of the Record Thought Unnecessary

Appellant thinks that all parts of the record are necessary except the following, which it designates as unecessary for the consideration of said points:

1. Order transferring appeal to the Supreme Court.

2. Petition for allowance of appeal.

3. Appellees' Statement of Grounds Against Jurisdiction and Motions.

4. Reporter's Transcript.

Robert H. Wallis, Attorney for Appellant.

[fol. 287] Received copy of the within Statement of Points and Designation Re Record by appellant in the within entitled action this 16th day of May, 1946.

Ray L. Chesebro, Wilbur Bassett, Attorneys for Appellees.

[fols. 288-289] [File endorsement omitted.]

[fol. 290] IN THE SUPREME COURT OF THE UNITED STATES

APPELLEES' DESIGNATION OF PORTIONS OF THE RECORD TO BE PRINTED—Filed May 24, 1946

Now come the adverse parties, the Appellees herein, and under Rule 13, subdivision 9 of the above-entitled Court, file with the clerk of said court this designation of those parts of the record herein which the said Appellees think material, to wit:

I

1. Order transferring appeal to the Supreme Court.

2. Petition for allowance of appeal.

3. Appellees' Statement of Grounds Against Jurisdiction and Motions.

4. Reporter's Transcript.

[fol. 291] 5. All of the records, orders and documents on file herein.

Ray L. Chesebro, City Attorney; Bourke Jones, Assistant City Attorney; Wilbur Bassett, Deputy City Attorney, Attorneys for Appellees.

[fol. 292] STATE OF CALIFORNIA,
County of Los Angeles, ss:

Paul K. Duffy, being sworn, deposes and says: That he is and at the time of service of the papers herein referred to, over eighteen years of age, and not a party to the within entitled action; that he personally served the within Appellees' Designation of Portions of the Record to be Printed on the hereinafter named appellant, by delivering to and

leaving a copy to and with Almira G. Cassil in the city of Long Beach, California at 328 American Ave. Almira G. Cassil stated at the time of said service that she was the secretary of Robert H. Wallis, attorney for the Appellant in the above intitled action. She further stated that the said Robert H. Wallis was out of the state and would continue to be out of the state for at least thirty days because of a failure of a local bank for which the said Robert H. Wallis is the attorney. His services for the said bank requiring his presence in Washington, D. C.

The date of the above mentioned service upon Almira G. Cassil was May 21, 1946.

Paul K. Duffy.

Subscribed and sworn to before me this 22nd day of May, 1946. Stanley Matthews, Notary Public in and for the County of Los Angeles, State of California. (Seal.)

[fol. 293] 21 May 46. Receipt is hereby acknowledged of copy of Appellees' Designation of Portions of the Record to be Printed.

Almira G. Cassil, Secretary to Robert H. Wallis, Attorney for Appellant.

[fol. 294] [File endorsement omitted.]

[fol. 295] SUPREME COURT OF THE UNITED STATES

ORDER POSTPONING FURTHER CONSIDERATION OF THE QUESTION OF JURISDICTION—June 3, 1946

The statement of jurisdiction in this case having been submitted and considered by the Court, further consideration of the question of the jurisdiction of this Court is postponed to the hearing of the case on the merits.

Mr. Justice Jackson took no part in the consideration or decision of this question.

Endorsed on Cover: File No. 50,919. California, Supreme Court. Term No. 1031. The Gospel Army, a Corporation, Appellant, v. The City of Los Angeles, Board of Social Service Commissioners, Department of Social Service, and Dan O. Hoye, City Controller. Filed May 9, 1946. Term No. 103 O. T. 1946.

FILE COPY

Office - Supreme Court, U. S.
FILED
MAY 9 1946
CHARLES ELMORE CROPLEY,
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 103

THE GOSPEL ARMY, A CORPORATION,
Appellant,

vs.

THE CITY OF LOS ANGELES, THE BOARD OF SOCIAL SERVICE COMMISSIONERS, DEPARTMENT OF SOCIAL SERVICE, AND DAN O. HOYE, CITY CONTROLLER,
Appellees

STATEMENT AS TO JURISDICTION

APPEAL FROM THE SUPREME COURT OF THE STATE OF CALIFORNIA

ROBERT H. WALLER,
Counsel for Appellant,

INDEX

Subject Index

	Page
Statement as to jurisdiction	1
Statutory provisions believed to sustain the jurisdiction	1
State statute involved	1
Dates of judgment sought to be reviewed and application for appeal	13
Statement of grounds upon which it is contended the questions involved are substantial	14
Nature of the case and rulings of the Court which are believed bring the case within jurisdictional provisions to sustain jurisdiction	18
Appendix—Opinion of the Supreme Court of California	52

Table of Cases Cited

Cantwell v. *Connecticut*, 310 U. S. 296, 84 L. Ed. 295	18, 25, 40, 41, 45
Brock v. *Superior Court*, 12 Cal. (2d) 603	41, 45
Darte, In re, 172 Cal. 47	27, 40, 44
Dobbins v. *City of Los Angeles*, 139 Cal. 179	26
Gospel Army v. *City of Los Angeles*, 27 Adv. Calif. Rep. 246	32
Holmes, In re, 187 Cal. 640	26
Lacey, Ex parte, 108 Cal. 326	26
Murdock v. *Pennsylvania*, 319 U. S. 104, 87 L. Ed. 1292	18, 25, 40
Near v. *Minnesota, ex rel. Olson*, 283 U. S. 697	28
Schneider v. *Irvington*, 308 U. S. 161	41, 44
Thomas v. *Collins*, 65 Sup. Ct. 315	35
Yick Wo v. *Hopkins*, 118 U. S. 356	45
Zucht v. *King*, 260 U. S. 174, 67 L. Ed. 194	18

Statutes Cited

City Charter of City of Los Angeles, Section 215	20
Constitution of the United States:	
First Amendment	14, 19, 23, 24

Page

Fourteenth Amendment 1, 14, 19, 23, 24, 35, 43, 45
Judicial Code, Section 237(a) (28 U. S. C. A. 344a and b) (8 F. C. A., Title 28, Sec. 344a) 1
Municipal Code of Los Angeles, Section 24.01, ... 10, 12, 17, 24, 26, 37, 40
Ordinance No. 77,000 of the City of Los Angeles:
Section 19 10
Section 44.01 ..... 10, 16, 20, 39
Section 44.02 7
Section 44.03 ..... 4, 5, 10, 15, 16
Section 44.05 ..... 2, 5, 22
Section 44.06 ..... 4, 15, 22
Section 44.08 7
Section 44.12 5
Section 44.14 6
Section 44.15 5
Section 44.16 ..... 2, 9, 13
Section 44.18 ..... 10, 13, 15
Section 44.19 ..... 7, 8, 16, 20, 35, 37, 39, 40

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 1216

THE GOSPEL ARMY, A CORPORATION,

vs. *Appellant,*

THE CITY OF LOS ANGELES, THE BOARD OF SOCIAL SERVICE COMMISSIONERS, DEPARTMENT OF SOCIAL SERVICE, AND DAN O. HOYE, CITY CONTROLLER,

Appellees

JURISDICTIONAL STATEMENT ACCOMPANYING APPLICATION FOR ALLOWANCE OF APPEAL FROM FINAL JUDGMENT IN GOSPEL ARMY v. CITY OF LOS ANGELES, ET AL.

Jurisdiction of the United States Supreme Court to entertain appeal in this case is sustained by the Fourteenth Amendment to the Constitution of the United States, and Section 237(a) of the Judicial Code, 28 U. S. C. A. Section 344(a) and (b), 8 F. C. A. Title 28, Sec. 344(a).

The state statute involved in this case is Ordinance No. 77,000 of the incorporated City of Los Angeles, California, which ordinance is entitled "Charities." It contains nineteen sections, some of which have many subdivisions, the 19th containing 33 subsections, the last 28 of which regu-

late "Pawnbrokers, Second Hand Dealers, Junk Dealers, Collectors," and said ordinance, through the provisions of said sections, purports to regulate all public solicitations of donations for charitable purposes and it prohibits any such solicitations without strict compliance with its provisions, and violations thereof are made punishable as penal offenses.

Plaintiff is a religious organization having solicitors who secure donations of money and goods, which goods are sold for plaintiff by one solicitor and the proceeds and the money donated are used for plaintiff's religious activities, including charities, and hence has been held not to be "solely for evangelical, missionary or religious purposes."

To be exempted from the foregoing provision and all others of the ordinance relative to solicitors and solicitations from the public it is provided in Section 44.16 of the ordinance that such solicitations must be "made solely for evangelical, missionary or religious purposes."

Said ordinance expressly requires: That any person who seeks to solicit donations for charity shall first apply to the "Department of Social Service" of said city for a permit or license, and that the organization for which such solicitation is to be made shall not authorize such solicitation unless such application has been made. (Ord. Sec. 44.05.) That said application of such person, called "Notice of Intention," shall contain complete information as follows:

"Charity Solicitation—Notice of Intention:

"No person shall solicit, nor shall any officers or member of any association authorize any person to solicit, any contribution for any charitable purpose unless, within the fiscal year of the City in which such solicitation is made and at least ten (10) days prior to the beginning of such solicitation, there shall have been filed with the Department, on a form furnished by

said Department, by such person or association upon whose behalf the solicitation is made, written Notice of Intention to solicit such contribution, which notice shall contain complete information as follows:

"(a) The purpose of the solicitation and use of the contribution to be solicited;

"(b) A specific statement, supported by reasons and, if available, figures, showing the need for the contribution proposed to be solicited;

"(c) The character of such solicitation and how it will be made or conducted;

"(d) The expenses of the solicitation, including salaries and other items, if any, regardless or from what funds such expenses are payable;

"(e) What portion of the contributions collected as a result of the solicitation will remain available for application to the specific purposes declared in the Notice of Intention as the object of the solicitation;

"(f) A specific statement of all contributions collected or received by such person or association within the calendar year immediately preceding the filing of such Notice of Intention. The expenditures or use made of such contributions, together with the names and addresses of all persons or associations receiving salaries, wages, compensation, commissions or emoluments from such contributions, and the respective amounts thereof;

"(g) The names and addresses of the officers and directors of any such association for which the solicitation is proposed to be made;

"(h) A copy of the resolution, if any, of any such association authorizing such solicitation, certified to as a true copy of the original of such resolution by the officer of such association having charge of the records thereof;

"(i) A statement that the signers of such Notice have read and are familiar with the provisions of this Article and will require all solicitors engaged in such solicitation to read and be familiar with all sections of this Article prior to making any such solicitation."

Section 44.06 of said ordinance provides that the "Board of Social Service Commissioners" of said city, may, if "in its opinion" the "Notice of Intention does not disclose sufficient information for the public concerning the facts hereinbefore required" concerning "the person or association" making such solicitation or for whom it is made, "then, upon the request of said Department, there shall be filed, in writing," within 48 hours after said request, such additional information as said Board requires thereon, and "if requested" the "Notice of Intention and additional information shall be signed by the association as well as the applicant for permit."

Section 44.03 authorizes "the Department" to "investigate the allegations of Notice of Intention, or any statement or report"; to "have access to and inspect and make copies of all books, records," etc. of the applicant for permit or those for whom the solicitation is to be made, and to require such additional information as "in the opinion of the Board" shall "be of assistance to the public to determine the nature and worthiness of the purpose for which solicitation is made."

No provision limits the number of calls for information which may be made by "the Department" or "the Board" or the time to be taken in their investigation before the Notice of Intention is approved or rejected.

In no section of said ordinance is it provided that a permit or license shall be granted after all required information has been furnished, and investigations have dis-

closed no fault in the applicant or the organization for whom solicitations are made.

However, by Section 44.03 it is provided that "the Department: Shall have power to issue all solicitors Information Cards," and "to charge a fee for supplying Information Cards," which fee is a nominal amount.

Said section further states as to the contents of the Information Card that it must "show:

> "(1) That same is issued as information for the public and is not an endorsement;
>
> "(2) The Board may, pursuant to Ordinance No. 34982, omit above provision and state that they endorse such charitable association;
>
> "(3) The pertinent facts set forth in Notice of Intention required under Section 44.05 of this Article;
>
> "(4) Any additional information obtained as shall in the opinion of the Board be of assistance to the public to determine the nature and worthiness of the purpose for which the solicitation is made; * * *"

Other sections regulate the methods to be used in solicitations for charity and the conditions with which the solicitor must comply.

Section 44.03 requires that solicitors must have the written authorization of the organizations for whom they solicit.

Section 44.12 directs that they exhibit to the prospective donee the Information Card and "allow him sufficient opportunity to read same" or read it to him, "before accepting any contribution solicited."

Section 44.15 compels the solicitor to tender to each donor a written receipt signed by the solicitor "which contains in addition to a description of the amount and kind of the contribution, substantially the following matters:

"(a) The name of the association, if any, in whose name or upon whose behalf the solicitation is made.

"(b) A statement as to whether the contribution solicited is to be applied for the general purposes of such association, if any, or for specific purposes, and if for specific purposes the nature thereof shall be clearly stated.

"(c) A statement that the Information Card, issued by the Department, was presented to the person making the contribution for his perusal prior to receipt by the solicitor of the contribution receipted for."

The solicitors' labors continue after donations have been received (Section 44.14) or are to be performed by the religious organization for whom he solicited for charity. This section reads:

"Solicitations—Report—Time—Expenses—Uses:

"Every person soliciting any contribution for any charitable purpose must file with the Department within 30 days after the close of any such solicitation or within 30 days after a demand therefor by the Department a report to the Department, stating the contributions secured from or as a result of any such solicitation, and in detail all expenses of or connected with such solicitation, and showing exactly for what uses and in what manner all such contributions were or are to be disbursed or distributed. Every such report shall be made on forms to be furnished by the Department, and signed by the persons or association filing or obligated to file the Notice of Intention and such report, if made by any such association, shall be signed by at least two officers thereof. Provided, that when any such solicitation is made by any such association such report need be filed only by such association and not by an individual solicitor engaged in any such solicitation."

Section 44.08 provides:

> "No person shall solicit any contribution for or on behalf of any charitable association, unless such association is maintaining a system of accounting whereby all donations to it and all disbursements made by it are entered upon the books or records of its treasurer or other financial officer."

Section 44.02 empowers "the Board of Social Service Commissioners" to "publish the results of any investigation which the Department of Social Service may have made relative to the application for permit to solicit and information acquired from an inspection of the books of the person or association on whose behalf solicitation is made," and to give "such publicity to any such results by such means as may be deemed best to reach the general public and persons interested."

The foregoing provisions deal with only one class of solicitors as described by said ordinance.

Further provisions designate a "promoter" as "any person who for pecuniary compensation or consideration received, or to be received, solicits * * * contributions for or on behalf of any other person or charitable association, corporation or institution."

Section 44.19, subdivision 1, of said ordinance reads:

> "No promoter shall in any manner whatsoever, solicit within the City of Los Angeles any contribution for any actual or purported charitable use, purpose, association, corporation or institution without license from the Board so to do."

To condense the other subdivisions of this section, only those provisions which are necessary to reveal the nature of the provisions of the statute in this case involved will be quoted. They read:

Section 44.19 continues:

"To obtain such license, such promoter shall make and file with the Board an application therefor in writing • • •

"(a) The name and address of the applicant, and if such applicant be a corporation, the name and address of each of its managing officers and agents, and, if it be an unincorporated association, firm or partnership, the name and address of each member of such unincorporated association, firm or partnership;

"(b) A succinct statement of facts showing that the applicant, if not a corporation or an unincorporated firm, association or partnership, is of good character and reputation, or if the applicant be a corporation that each of its managing officers and agents is of good character and reputation, or if the applicant be an unincorporated association, firm or partnership, that each of its members is of good character and reputation.

"(c) The general plan, character and method in or by which applicant proposes to conduct its or his business as a promoter.

"(3) Bund.

"(a) (As amended by Ordinance No. 81,618, approved Sept. 3, 1939). At the time of so filing with the Board an application for such license the applicant shall file and thereafter maintain with the Board a good and sufficient bond in the aggregate sum of Two Thousand Dollars ($2,000) running to the City of Los Angeles for the use and benefit of interested persons and parties, executed by the applicant and by two or more responsible sureties, or a surety company authorized to do business in the State of California, to be approved by the Board • • •

"(4) Fee.

"For filing such application the applicant shall pay a fee of $25.00 to the Board."

Subdivision 5 entitled "Investigation," fixes a standard upon compliance with which, if the Board, after such further investigation as it deems advisable, is satisfied with the applicant's showing, a license must be granted. It provides:

> "(a) That the applicant is of good character and reputation, or
>
> "That every managing officer or agent of the applicant if the applicant be a corporation, is of good character and reputation, or if the applicant is an unincorporated association, firm or partnership, each member thereof is of good character and reputation."

Subdivision (q)(a), added to said ordinance by amendment prohibits that a "promoter" permit any person acting under his direction for pecuniary compensation act as a solicitor unless such person "be registered as a solicitor by the Board," and (q)(b), requires that to be registered by the Board a person must appear before the Board, furnish proof of "good moral character, that his reputation for honesty is good" and furnish a bond "satisfactory to the Board" in the "sum of Five Hundred Dollars."

Section 44.16, which exempts "any association soliciting contributions solely from its members or solely for evangelical, missionary or religious purposes" further reads:

> "Provided, however, that in any case where it shall come to the attention of the Board that any solicitation has been or is being or intended to be made for evangelical, missionary or religious purposes but in such manner as in the opinion of the Board is calculated to give or may give the impression to the person or persons solicited in any such solicitation or to the public that the purpose of such solicitation is either in whole or in part charitable, then the Board, if in its opinion the public interest will be subserved thereby, shall investigate the matter of such solicitation and give publicity

to its findings thereon in such manner as it may deem best to advise the public of the facts of the case." (Reference being to the issuance of permits.)

Section 44.03, "Powers of Department," (1) and (2) reads:

"(1) That same is issued as information for the public and is not an endorsement;

"(2) The Board may, pursuant to Ordinance No. 34982, omit above provision and state that they endorse such charitable association;"

After defining the term "promoter" as a solicitor for a consideration who solicits contributions for another, Section 44.01 reads:

"• • • that no person who is a bona fide paid officer or employee of a social service agency endorsed by the Board of Social Service Commissioners, shall be considered a promoter within the meaning of this article."

Section 19, subdivision 2, after providing that an applicant for a promoter-solicitor's license must file "an application therefor in writing, reads: "In such application, the applicant shall set forth, in addition to such information as may be required by the Board: "Then follows provisions which have been quoted.

The section of said Ordinance No. 77,000 added by amendment, and now a part of Section 44.18, which is entitled: "Section 24.01. Pawn Brokers, Second Hand Dealers, Junk Dealers," is especially involved in this case, one issue therein being its applicability to the Gospel Army's method of sale of its donated articles for money to be used in its activities.

The following provisions of the section are accurately set forth in the majority opinion of the State Supreme Court as follows:

> "Section 24.01 of the Los Angeles Municipal Code defines a 'junk dealer' as 'a person having a fixed place of business in this City who goes from house to house or from place to place, gathering, collecting, buying, selling or otherwise dealing in any old rags, sacks, bottles, cans, paper, metal or other articles commonly known as junk.' A 'secondhand dealer' is 'a person engaging in, conducting, managing, or carrying on the business of buying, selling or otherwise dealing in secondhand goods, wares or merchandise.' Junk dealers and secondhand dealers must obtain a permit to engage in business from defendant City's Board of Police Commissioners. The following 'Requisites of Permits' are set forth in subsection (c) of Section 24.01,' (1) Persons desiring to obtain a permit to conduct, manage or deal in any business mentioned in subsection 'a' of this Section *Section* shall file an application in writing with the Board specifying by street and number the place where such business is proposed to be conducted or carried on; junk collectors having no fixed place of business shall specify in such application their residence by street number. The application shall be signed by the applicant and shall contain his residence address. (2) Before receiving an application for any permit the Board shall require the payment of such fees as are hereafter specified. (3) Upon receipt of such application the Board shall cause to be investigated the business of the applicant and location at which applicant proposes to engage in business as specified in said application. Thereafter the Board may issue a permit to the applicant which shall be effective for the remaining portion of the current year. (4) Persons operating under the provisions of this Section shall be required to secure an annual renewal of such permit commencing January 1st of the succeeding year in which such permit was granted

• • • The fees prescribed are set forth in subsection (d): '(1) Applications for permits other than provided for in this subsection shall pay the sum provided in Section 22.10; (2) Applications for special permits, the sum of $50.00; (3) Applications for annual permit renewal, the sum of $25.00; • • • Subsection (e) provides: '(1) The Board shall not grant any permit provided for in this Section to persons who fail, refuse or neglect to comply with the laws and ordinances relating to and regulating the business for which such permit is sought • • • No permit shall be granted to any person to conduct, manage, carry on or deal in any business mentioned in subsection 'a' of this Section whose permit has been revoked by the Board until six (6) months have elapsed after such revocation.' Holders of permits must keep a complete record of all goods purchased or received by them, which is open to inspection by any member of the police department. They must also file with the Chief of Police daily reports on prescribed forms of the goods purchased or received during the preceding day, describing the article and specifying the hour of the day when it was acquired, the name and address of the party from whom it was acquired, the height, age, sex, complexion, and other characteristics of that person. The hours of business are prescribed. Secondhand dealers must keep the articles received by them 21 days before selling them. The period prescribed for junk dealers is 3 days. • • •"

Said Section 24.01 (j) also provides:

"Signs. Persons defined in subsection 'a' of this Section shall maintain on the premises where said business is located, a sign plainly printed in the English language of sufficient size so that the same may be easy to read from the sidewalk in front of said place of business. Such sign shall state the business in which such person is engaged. If said business is located in an office building the sign shall be placed on the door of said office. If the business is located in a depart-

ment of any building the sign shall be placed at the entrance to said department."

Section 1, of an amendment enacted January 21, 1943, regulates the hours during which the businesses defined in subsection (a) which has been quoted, which regulation excludes certain holidays and generally the hours "between 8:00 o'clock P. M. Saturday and 8:00 o'clock A. M. of the following Monday."

Pursuant to power delegated by said ordinance, said Board by resolution enacted rules which provide that to constitute solicitation for religious, evangelical or missionary purposes, in order to be exempt from the provisions of said ordinance and from all interference by said Board and its agents as provided by Section 44.16, the solicitation must be "solely" for such purposes and the "cause" must be "purely religious"; that even though this requirement be complied with, if the person who does the actual soliciting receives any compensation whatever, said exempting provision cannot apply, and that unless 50% of any funds collected for charity is applied to the charitable use for which it is sought, without deductions for expenses or otherwise, no permit to solicit shall be issued.

By these rules the Board merely construes provisions contained in Section 44.16 and 44.18, supra.

The judgment and the decree sought to be reviewed by application for allowance of appeal was rendered on the 20th day of November, 1945, and became final on December 17, 1945, a petition for rehearing having been duly filed by the plaintiff and respondent, which said petition was by said State Supreme Court denied on December 17, 1945.

Statement of Grounds upon Which It Is Contended the Questions Involved Are Substantial

The case involves the validity of said "charities and reliefs" ordinance of the City of Los Angeles and the rules and regulations of the defendant Board and of the defendant Commission made pursuant to said ordinance, it being claimed by plaintiff, Gospel Army, that said ordinance, rules and regulations, on their face, and also as construed and applied by defendants, infringe plaintiff's right of religious liberty and the free exercise thereof, and its right to dispense charity, in violation of the First and Fourteenth Amendments to the Constitution of the United States, in that certain provisions of said ordinance, rules and regulations, in their application to religious organizations, and especially to plaintiff, constitute prohibited prior restraints upon the exercise of freedom of religion, and that certain of said provisions, in their application to plaintiff and to one of its solicitors, and to all religious organizations similarly situated, are arbitrary, unreasonable and unduly burdensome and that certain of them are arbitrarily discriminatory and deny the equal protection of said enactments to such organizations, and are thus especially prejudicial to plaintiff if enforced against it, and as defendants seek and threaten to apply them to it.

Among the sections and provisions of said ordinances prohibits solicitation unless the person who would solicit first files with the Department of Social Service of said City an application for a permit (called a Notice of Intention) to solicit in which nine items of information and data showing among other matters "the need for the contribution to be solicited, the expenses to be incurred, "including salaries"; what portion will be available for specific purposes named in said application, and much information con-

cerning the association, if any, for which the solicitation is to be made.

Section 44.06 authorizes the requirement of further information from the applicant if the Department considers that furnished sufficient for the public concerning the matter theretofore required.

Section 44.03 authorizes the Department to investigate (without limitation as to time) the allegations of the application for permit to solicit, and including inspection of books, papers, etc. of the applicant's employer, whether it be a church or other organization.

Section 44.03 authorizes, but does not require said Department to issue the permit (called Information Card) for which application has been made, and Section 44.01 inhibits solicitation by anyone without having secured such permit or license.

Section 44.18 requires that a "fee" of $25.00 be paid when the application for a license to solicit is filed, and the applicant must furnish a bond in the sum of $2,000.00.

Section 44.03 provides that the permit or license (called Information Card) shall show "the pertinent factor set forth in the application for permit (Notice of Intention) to solicit, and "any additional information obtained" as shall "in the opinion of the Board," "be of assistance to the public to determine the nature and worthiness of the purpose" of the solicitation.

The foregoing are among the provisions of said ordinance which plaintiff, the Gospel Army, has contended constitute prior restraints upon the exercise of their activities in furtherance of the promulgation of their religion.

Also, as to the quoted provisions of Sections 44.03, 44.06 and 44.18, it was claimed that they empower said Department, arbitrarily and unreasonably, without standard or guide, to call for information irrelevant to the matter in hand, and to insert in the permit prejudicial matters

derogatory to the solicitation and which may have been obtained from any source whatsoever, and of which the applicant has not been apprized.

Section 44.01 of said ordinance provides that "no person who is a bona fide paid officer or employee of a social service agency endorsed by the Board" of Social Service Commissioners, "shall be considered a promoter within the meaning of this article." and said section defines a promoter as "any person who for pecuniary compensation or consideration received solicits contributions * * * for or on behalf of any other person or charitable association, corporation or institution."

Section 44.03 authorizes the said Department to cause any Information Card (permit or license) to show that the issuance thereof "is not an endorsement"; or it may omit "the above provision and" state that they endorse such a charitable association."

The above provisions of Sections 44.01 and 44.03 are among the provisions of said ordinance which said Gospel Army has maintained are discriminatory and deny the equal protection of the law to those religious or charitable organizations and their solicitors which the Department may arbitrarily and capriciously refuse to endorse while endorsing others because of favoritism or for other irrelevant reasons, and that in the instant case said Gospel Army and its promoter-solicitor have been thereby denied the equal protection of the instant ordinance.

By amendment to said ordinance Section 24.01 of the "Pawn Brokers—Second Hand Dealers" ordinance of said city was added to Section 44.19 as "Sec. 24.01 Pawn Brokers, Second Hand Dealers, Junk Dealers, subsection (a) thereof defines the terms of the above title as follows:

> "Junk Dealer" shall mean a person having a fixed place of business in this City who goes from house to house or from place to place gathering, collecting, buy-

ing selling or otherwise dealing in any old rags, sacks, bottles, cans, paper, metal or other articles commonly known as junk.

"Junk Collector" shall mean a person having a fixed place of business in this City and engaging in, conducting, managing or carrying on the business of buying, selling or otherwise dealing in, either at wholesale or retail, any old rags, sacks, bottles, cans, paper, metal or other articles commonly known as junk.

"Pawnbroker" shall mean a person engaged in, conducting, managing or carrying on the business of pawnbroking, or the business of loaning money for himself or for any other person upon personal property, or the business of purchasing articles of personal property and reselling or agreeing to resell such articles to the venders or their assignees at prices agreed upon at or before the time of such purchase.""

Said Gospel Army has contended that the foregoing provisions of said Pawn Brokers, Second Hand Dealers, Junk Dealers Section is violative of its constitutional rights under the First Amendment and the due process clause of the Fourteenth Amendment to the Federal Constitution; that said entire section is inherently incapable of application to the activity of a religious organization which maintains a store from which donated articles are sold and the net proceeds used in furtherance of its religious work in spreading its religious beliefs, although, in that behalf, some part thereof is employed in its own charities. Plaintiff further has argued that the provisions requiring that the permit and licenses making daily reports to the police, keeping records, and other details are infringements of said constitutional rights and that the enforcement of such provision and of said Section 24.01 against plaintiff and its store and the employee who conducts it would take its property without due process of law in violation of said amendment.

Defendants have contended that, within the meaning of said Ordinance No. 77,000 and said amendment, the store is

a secondhand or junk store; that it in no way concerns religion or charity; that the provisions of such enactment are necessary for "control of crime and the protection of the public health and welfare," and they assert that the instant "regulations" are "designed to prevent or control crime and protect the public health, safety and welfare."

Again defendants have asserted that said provisions are "designed to protect the public from fraud," and are entirely lawful as an exercise of the police power.

The State court of last resort, the Supreme Court of California, reversed the judgment of the trial Court and held and adjudged that none of the provisions or requirements of said ordinance, rules and regulations on their face, or as applied to plaintiff or other religious organizations, violate plaintiff's, or infringe said constitutional rights or amendments to the Federal Constitution, and adjudged that each of said enactments and the requirements thereof and said ordinance as a whole constitute a valid exercise of the police power and that plaintiff is in every respect subject thereto, and in so holding and adjudging said Court rejected and disapproved as unsound each of plaintiff's said claims, some of which were cases which, it is believed, sustain jurisdiction and bring the instant case within the jurisdiction of said constitutional and statutory provisions. They are:

Cantwell v. *Connecticut*, 310 U. S. 296, 84 L. Ed. 295;
Murdock v. *Pennsylvania*, 319 U. S. 104, 87 L. Ed. 1292;
Zucht v. *King*, 260 U. S. 174, 176, 177, 67 L. Ed. 194.

Nature of the Case and Rulings of the Court Which Are Believed Bring the Case Within Jurisdictional Provisions to Sustain Jurisdiction.

The action involved was commenced by said Gospel Army by a complaint filed in the Superior Court of said State in and for the County of Los Angeles, and was tried on an

amended complaint wherein it was set forth that the defendants, City, Board, Commission and officers, had control and the enforcement of the charities and relief ordinance of said City of Los Angeles and that defendants had notified the plaintiff that it was subject to said ordinance and rules and regulations of the defendants' Board and Department pertaining thereto, and that "before plaintiff organization could continue their religious activities in the City of Los Angeles they must first apply for and receive from said Board of Social Service Commissioners and said Department of Social Service a permit authorizing said plaintiff organization to continue their religious activities," said Commissioners and Department having full power to pass on and reject all applications coming before them"; that defendant Hoye, City Controller "has demanded" of plaintiff that it pay to said City a "license to operate the store of plaintiff for the sale and disposal of salvaged personal property donated and given to plaintiff by the general public, the proceeds therefrom being used by the plaintiff in the furtherance of said religious organization, and that said Hoye and all of the other defendants contend and state that plaintiff is violating ordinances of said City and is subject to criminal prosecution, and said defendants have and are threatening criminal prosecution of plaintiff.

It was further alleged:

"That if this plaintiff is required to obtain a permit and the payment of the license as a condition of their soliciting and receiving donations as aforesaid, to be used in the furtherance of said religious activities, will amount to a prior restraint on the exercise of their religious activities within the meaning of the Constitution of the United States, both as to the First and Fourteenth Amendments thereof, and is an infringement upon the free exercise of their religious liberty as protected by the said constitution.

"That unless the said defendants are enjoined and restrained from doing the things hereinbefore mentioned the rights of the plaintiff to worship and carry on said religious activities and their right to the free exercise of their religious liberty will be infringed and said plaintiff will suffer irreparable injury therefrom" (Cl. Tr. pp. 17, 18).

Defendants' answer to plaintiff's amended complaint enlarged the issues by averments that plaintiff must secure "a permit" "from the Board of Police Commissioners" and "in not doing so plaintiff is subject to criminal prosecution therefor," and said answer also alleged that defendants "contend that under the provisions of Section 24.01 * * * of said Municipal Code a permit must be secured from the Board of Police Commissioners of the City of Los Angeles for the operation of the business which has been and now is being conducted in said city" (Cl. Tr. p. 27).

In said answer defendants "admit that defendants have notified plaintiff that it is subject to the rules, regulations and laws of defendant city pertaining to charities and relief." It is alleged "that before plaintiff can continue its activities in the City of Los Angeles "it must first apply for and receive from said Board of Social Servic Commissioners and said Department of Social Service a permit authorizing plaintiff to do so" (Cl. Tr. p. 28).

The answer further alleges:

"Answering paragraph IV thereof admit that defendants have notified plaintiff that it is subject to the rules, regulations and laws of defendant City pertaining to charities and relief and in this connection allege that plaintiff is subject to the sections of the charter and the ordinances of the City of Los Angeles pertaining to charities and relief, being particularly sections 70 to 88 inclusive and section 215 of the charter of the City of Los Angeles and sections 44.01 to 44.19 inclusive, of ordinance No. 77,000 as amended, which

ordinance was enacted on September 30, 1936 and became effective on November 12, 1936 and was entitled, "An Ordinance enacting a revision and codification of the regulatory and penal ordinances of the City of Los Angeles, to be known as the Los Angeles Municipal Code, providing penalties for violation of the provisions thereof and repealing all ordinances and parts of ordinances in conflict therewith," and which ordinance in so far as the sections thereof in question are concerned, was amended by ordinance No. 80,520 which was enacted March 1, 1939 and became effective April 8, 1939, ordinance No. 81,618 which was enacted September 15, 1939 and became effective October 19, 1939, and ordinance No. 84,121, which was enacted February 5, 1941 and became effective March 14, 1941.

"These defendants deny that they or any of them have notified plaintiff that before plaintiff can continue its religious activities in the City of Los Angeles it must first apply for and receive from the Board of Social Service Commissioners and the Department of Social Service a permit authorizing plaintiff to continue its religious activities in the City of Los Angeles.

"These defendants further allege that before plaintiff can continue its activities in the City of Los Angeles it must first apply for and receive from said Board of Social Service Commissioners and said Department of Social Service a permit authorizing plaintiff so to do; deny that plaintiff has carried on or is carrying on religious activities and deny that said charter and said ordinances empower said Board of Social Service Commissioners and said Department of Social Service arbitrarily to pass on and reject any applications of plaintiff to carry on religious activities and allege that said ordinances apply only to charitable activities; but said defendants do allege that before plaintiff, its officers or employees, may solicit any contributions for charitable purposes plaintiff must file with said Department

of Social Service Commissioners a notice of intention to solicit charitable contributions, as provided in section 44.05 and 44.06 of said Municipal Code" (Cl. Tr. pp. 24-26).

Upon the trial in the Superior Court of said State and said County, judgment was rendered for the plaintiff and it was decreed that the defendants and each of them and their departments and all persons acting under them be permanently restrained and enjoined from further interference and threatened acts which would in any way prevent the free exercise of the religious liability of said plaintiff (Cl. Tr. p. 37), which judgment was based upon findings that "the plaintiff is a duly constituted and functioning religious organization, by literature and word of mouth, of its religious beliefs, by and through its auxiliaries, and in the procuring of donations in the form of money and articles of value in the prosecution and furtherance of its religious activities."

The findings further state:

"It is true that the said Defendants have notified the Plaintiff that it is subject to the rules, regulations and laws of the said Defendants pertaining to charities and relief and that the said Plaintiff organization is subject to enforcement of said rules and regulations by the Board of Social Service Commissioners and the Department of Social Service, and that before said Plaintiff organization can continue their religious activities in the City of Los Angeles they must first apply for and receive from the said Board of Social Service Commissioners and Department of Social Service a permit authorizing said Plaintiff organization to continue their religious activities in said City of Los Angeles, the said Board of Social Service Commissioners and Department of Social Service having full power, under the ordinances of said City of Los

Angeles, to pass on and reject all applications coming before them; that the Defendant, Dan O. Hoye, the City Controller, of the City of Los Angeles, has notified and demanded of the Plaintiff that it must pay to the City of Los Angeles, through his office, a license to operate the store of Plaintiff, which store is being conducted by Plaintiff for the sale and disposal of salvaged personal property donated and given to the said Plaintiff by the general public, the proceeds derived therefrom is used by the Plaintiff in the furtherance of said religious organization, and that said Dan O. Hoye and all of the other defendants contend and state that the Plaintiff is violating the ordinances of the City of Los Angeles pertaining thereto and is subject to criminal prosecution, and the said defendants have and are threatening criminal prosecution of this Plaintiff.

"It is true that if this Plaintiff is required to obtain a permit and the payment of the license as a condition of their soliciting and receiving donations as aforesaid, to be used in the furtherance of said religious activities, will amount to a prior restraint on the exercise of their religious activities within the meaning of the Constitution of the United States, both as to the First and Fourteenth Amendment thereof, and is an infringement upon the free exercise of their religious liberty as protected by the said constitution.

"It is true that unless the said Defendants are enjoined and restrained from doing the things hereinbefore mentioned the rights of the Plaintiff to worship and carry on said religious activities their right to the free exercise of their religious liberty will be infringed and said Plaintiff will suffer irreparable injury therefrom" (Cl. Tr. pp. 32-34).

The Defendants duly appealed from said judgment and the appeal was lodged in the Supreme Court of the State of California.

By their briefs filed in said Court defendants contended that all of the provisions of said ordinance No. 77,000, in-

cluding Section 24.01 of the Municipal Code, are binding upon and applicable to plaintiff's activities in soliciting donations and in the disposition of donated articles through its store, and upon plaintiff's employee through whom such activities are conducted.

Defendants' opening and closing briefs on appeal support the view that said ordinance constitutes a valid exercise of the police power and that no provision thereof is violative of the First or Fourteenth Amendments to the Federal Constitution.

Because plaintiff's solicitors received compensation, said opening brief asserts:

> "The only permit required is for solicitors when they are soliciting in a commercial sense for their own profit. The purport of the ordinance is to treat such solicitors as conducting a business. Similarly, if religious organizations conduct various businesses in connection with their religious activities, we maintain that they are subject to the provisions of the ordinances of the City of Los Angeles regulating such businesses, which ordinances are designed to prevent or control crime and protect the public health, safety and welfare." (App. Op. Br. p. 39.)

Said opening brief asserts:

> "The Board of Police Commissioners of the City of Los Angeles Has Jurisdiction Over the Secondhand Store Operated by the Plaintiff, * * *" (App. Op. Br. p. 36.)

Under captions II, III and IV of said brief it is contended that upon the facts found by the trial Court the judgment is erroneous, because it is contended, the ordinance involved is merely regulatory and constitutes a "registration system."

On page 27 of said brief, in referring to sections of Ordinance No. 77,000 which relate to the "fee" required

for securing the Information Card or permit to solicit by solicitors and promoters, it is said:

"We are here dealing with a regulatory fee or tax and not a license tax for revenue," and it is repeatedly argued that "our charities and relief ordinance is a registration system," or in other words, to the same effect. (App. Op. Br. p. 27.)

In said opening brief defendants rely upon and quote excerpts from the opinions in *Cantwell* v. *Connecticut*, 310 U. S. 296, and *Murdock* v. *Pennsylvania*, 87 L. Ed. 827, in support of the contention that the exercise of freedom of religion "may be regulated."

Again it is claimed that said ordinance is "merely regulatory" and "a registration law" which in nowise violates the right to freedom of religion of a religious body which engages in charities. (App. Op. Br. pp. 26-29.)

This contention is applied to all and sundry, the requirements of said ordinances as to applications by solicitors, promotors, their employers, investigations, accounts, reports, posting of bonds, as to which it is said that a mere "registration system" is made up "to identify" would-be solicitors and promoters. (App. Op. Br. pp. 25-30.)

This opening brief claims that the acts of the officers of the Board and of the officers of the Department whereby they determined that the maintenance by plaintiff of its store is not a religious activity and that it is a "secondhand store" are not violative of any constitutional guaranty. (App. Op. Br. pp. 36-38.)

Under caption II said brief quotes excerpts from recent decisions of the United States Supreme Court in which the issue of freedom of religion was involved as having been violated by ordinances or statutes. (App. Op. Br. pp. 25-30.)

Throughout said brief the said ordinance is treated comprehensively and as a whole with little discussion of particular sections, but defense of its validity is based on the

claim that it is a lawful police regulation of charities and a mere registration and identification system. (App. Op. Br. pp. 28, 29, 30.)

In reference to plaintiff's store, defendants' opening brief quotes provisions of the city ordinance in Section 24.01 and quotes from California decisions, *Ex parte Lacey*, 108 Cal. 326; *Dobbins* v. *City of Los Angeles*, 139 Cal. 179; *In re Holmes*, 187 Cal. 640, and other cases to the effect that secondhand stores and other businesses are subject to regulation under the police power and argues that a state has power to regulate a business even though it "may incidentally interfere with the activities of religion." (App. Op. Br. pp. 36-39.)

Plaintiff's reply brief states: "This action is a challenge to the constitutionality of the Charities and Relief Ordinance and to any portions of the Pawn Broker's Ordinance within the purview of which it may be considered that such organizations (religious organizations) come." (Res. Rep. Br. p. 3.)

Said brief points out that defendants' opening brief does not question the sufficiency of the evidence to support the findings, but questions that the findings sustain the judgment. (Res. Rep. Br. p. 4.)

It points out that defendants' brief admits that the Department claims the right under the ordinance to "classify all solicitors who receive any compensation" as "promoters" "whether they work for a church" and even though the donations which they collect are used for "purely religious activities." (Res. Rep. Br. pp. 4, 5.)

Said reply brief argues that Section 44.16, upon which defendants' brief relies for said claim, is violative of plaintiff's right of freedom of religion; that dispensing charity is an integral part of religion (Res. Rep. Br. pp. 6, 7); that plaintiff's store as conducted by it, and as its proceeds are

used in furtherance of its religious activities, including "the bestowal of charity," is "within the domain of religion" and that "any law which enters into that domain is void," quoting *In re Darte*, 172 Cal. 47. (Res. Rep. Br. p. 13 *et seq.*)

Said reply brief challenges defendants' claim that the classification of plaintiff's store, under the Second Hand Store provisions of said ordinance, is valid, and asserts that said provisions are an unconstitutional prior restraint upon the free exercise of religion and religious activites, and are unreasonable and burdensome even as applied to a business "well calculated to be infected with fraud, dishonesty and probable criminality." (Second Hand Stores and Pawn Shops.) (Res. Rep. Br. p. 17.)

To sustain this proposition *In re Darte* and *Murdock* v. *Pennsylvania*, both *supra*, are relied upon. (Res. Br. pp. 23-25, 42-44.)

Throughout said reply brief reliance is placed upon *In re Darte, supra*. It shows that said decision concerned an ordinance of the City of Los Angeles similar to Ordinance No. 77,000; that the Salvation Army maintained stores like plaintiff's, which Darte supervised; that the *Darte* decision denounced the ordinance involved as "unreasonable, arbitrary, oppressive, discriminatory" and "an abortive attempt to license the exercise of a right to use that which every citizen is awarded as a privilege by the Constitution," reference being to soliciting charities; that provisions as to the regulation of charities, similar to those involved herein, were "endless and needless red tape," (Res. Rep. Br. pp. 23-32); that the grant of power to make exceptions for the favored "approved" list was discriminatory and void; that a provision giving a commission power to fix a standard of efficiency and to insure the public in the wise use of funds in "religio-charitable activities"

cannot be maintained "against the constitutional right" of the citizens "to devote their lives to charitable work." (Res. Rep. Br. p. 35-41.)

Said reply brief attacks, as violative of the right of freedom of religion, and unwarranted prior restraints upon its exercise, all of the sections of ordinance No. 77,000 which defendants' brief classed as "regulatory" and creating a registration system, to-wit, provisions for the Notice of Intention, the issuance of Information Cards, for investigation by the Board and the Department, receipts to be given by solicitors, rendering reports and keeping and filing accounts, fees for permission to solicit and filing of bonds. (Res. Rep. Br. pp. 44-49.) And said brief cites and quotes *In re Darte, Cantwell* v. *Connecticut, Murdock* v. *Pennsylvania,* all *supra,* and *Near* v. *Minnesota ex rel. Olson,* 283 U. S. 697, and other decisions in support of said contention.

Said reply brief assails as a denial of the equal protection of the laws and unreasonable discrimination, the definition of the term "promoter" in Section 44.01 of said ordinance and provisions of Section 44.18 which imposes upon promoter-solicitors far greater burdens and restraints than are elsewhere placed upon ordinary "solicitors," some of which are that the promoter-solicitor must apply for a license, pay a $25.00 license fee, post a $2,000.00 bond, hold the license subject to the condition that it may be revoked at any time if the "Board finds that any act or omission of the promoter or his agents" in soliciting has been unfair, unjust, inequitable or fraudulent." (Res. Rep. Br. pp. 39-43.)

Also, it is pointed out that said section 44.18 violates the same constitutional guarantees by providing "that no person who is a bona fide paid officer or employee of a social service agency endorsed by the Board of Social Service Commissioners, shall be considered a promoter within the meaning of this Article" (Res. Rep. Br. p. 4).

It is further pointed out that these provisions are discriminatory and arbitrarily so against, and deny the equal protection of laws to, the association which employs such promoter-solicitor and who is not endorsed by said commission (Res. Rep. Br. p. 41).

Said reply brief quotes from the decision in *Murdock* v. *Pennsylvania, supra*, as follows:

> "The cases present a single issue—the constitutionality of an ordinance which as construed and applied requires colporteurs to pay a license tax as a condition to the pursuit of their activities • • •
>
> "But the mere fact that the religious literature is 'sold' by itinerant preachers rather than 'donated' does not transform evangelism into a commercial enterprise • • •
>
> "It is plain that a religious organization needs funds to remain a going concern • • • But an itinerant evangelist • • • does not become a mere book agent by selling the bible or religious tracts to help *defray his expenses or to sustain him* • • •
>
> "Those who can deprive religious groups of their colporteurs can take from them a part of the vital power of the press which has survived from the reformation • • •
>
> "It restrains *in advance* those constitution liberties of press and religion and inevitably tends to suppress their exercise. That is almost uniformly recognized as the inherent vice and evil of this flat license tax. • • • A person cannot be compelled 'to purchase, through a *license fee* or a license tax, the privilege freely granted by the constitution.'
>
> "If we picture an itinerant preacher under compulsion to comply with Ordinance 77,000 it is obvious that he would become a permanent citizen and a qualified voter before the restraints *in advance* would be removed, but few itinerant preachers or solicitors could pay a $25 license fee and pay for a $2,000 bond for a few days solicitation to support his preaching activities in city after city throughout the country. The proposi-

tion is preposterous to describe this license or permit fee as 'nominal' and 'regulatory.' The Murdock opinion forbids. Anent the itinerant preacher, it says:

" 'Itinerant evangelists moving throughout a State or from state to state would feel immediately the cumulative effect of such ordinances as they become fashionable.' " (Emphasis added.)

Said brief also claims that "the Cantwell decision holds that although Cantwell was selling books as well as attempting to persuade listeners to contribute money for his religious cause the city had not the right to say that his acts were not done in the exercise of religion" (Res. Rep. Br. p. 47).

Said reply brief shows that the fees required by the Pawn Brokers, Second Hand Dealers Section of said ordinance are flat, substantial licenses taxes, being $50.00 for a special license and $25.00 for each renewal (Res. Br. p. 17).

Plaintiff's said brief contends that its property rights are involved in this case; that its property right in said store and the means thereby afforded to provide funds to be used in furtherance of its religious activities are violated in contravention of the Fourteenth Amendment, and points out that the trial Court so found (Res. Br. p. 31).

Plaintiff's brief cites and quotes from the reporter's transcript the testimony of witnesses given at the trial and contends that such evidence shows that the store has been carried on as a religious activity; that the solicitors who collect donations of personal property to be disposed of in said store distribute religious tracts and testaments as they go about; that the money received from the sale of such goods had been turned over to the church treasury to carry on its religious work and was so used; that the Army does missionary work, gives temporary aid to the needy, food, lodging, clothes and carfare; that if it was shown that

of donated money the Army receives 70% for its treasury and general religious work. Also, from the testimony of the defendants' witnesses said brief points out that the defendants had classed Mrs. Colbert, who conducts said store for plaintiff, as a "promoter" and had demanded that a promoter's license be secured for her; that defendants had demanded the posting of a $2,000 security bond for or by her and a license fee of $25.00 be paid; that defendants, through their officers, had asserted that "the Board claims the right to refuse" to issue a license to a promoter and to refuse an Information Card to a solicitor after a Notice of Intention is filed, and that said officials construe the term "Notice of Intention" as meaning "application for a permit" and the term "Information Card" as meaning "license" (Respondent's (plaintiff's) Reply Br. pp. 7, 10, 32, 49).

Defendants' opening brief sets forth the substance of the evidence from the reporter's transcript of the trial (App. Op. Br. pp. 5-13), and from such evidence argues that the testimony of Mrs. Colbert, plaintiff's employee who sells salvaged articles in plaintiff's store, shows that she had the donated clothing disinfected, which it is said, indicates that a certain provision of the ordinance relating to secondhand stores should apply to plaintiff's store (App. Op. Br. p. 36); otherwise appellants' brief does not discuss the evidence.

Defendants' reply brief continued to urge that Ordinance No. 77,000 is regulatory only, and that it "does not attempt to do more than *regulate* charitable solicitations when not made for 'purely religious purposes'" (App. Rep. Br. p. 2).

It quotes decisions not previously mentioned to show that "a large discretion" is vested in the Legislature in "the exercise of the police power." It cites "the recent decisions of the United States Supreme Court in the "Je-

hovah's Witnesses" cases (App. Rep. Br. p. 3). It quotes McQuillin on Municipal Corporations in an attempt to show that the fees for Information Cards and the license "fee" required of the promoter by the instant ordinance being, as it is claimed, for regulation and not for revenue, are within the purview of the police power, and other authorities are cited to that point (App. Rep. Br. pp. 4, 5).

Said closing brief cites (but does not quote) Section 215 of the City Charter as giving the Board "further authority" to enforce the police power of the city in regard to charity solicitations."

Defendants argue that the City of Los Angeles has power to license "particular branches of business" (App. Rep. Br. p. 5); that if plaintiff's store must be regarded as a religious activity, a religious organization might "run banks, secondhand stores, pool halls, cafes, or bars • • • and under the guise of religion claim to be free of regulation," and the brief declares: "We say that this is not the law and never has been" (App. Rep. Br. p. 9).

And said brief concludes by quoting portions of Section 44.18 of the instant ordinance and arguing that there is "necessity of public regulation of charitable solicitations when it is not made entirely for religious purposes but contemplates the payment of a percentage or commission to its agents," and said brief insists that, therefore, the provisions which plaintiff's brief calls prohibited prior restraints upon the exercise of religious liberty, are valid and necessary to protect the public "from fraudulent solicitations for charitable or religious purposes" (App. Rep. Br. p. 11).

The contentions thus presented were broadly considered in the opinion and decision of the Court of last resort, the State Supreme Court, which opinion is reported in 27 advance California Reports at page 246.

Seven Justices, a Chief Justice and six associate Justices, constitute said Supreme Court. The Court opinion was written by Mr. Justice Traynor and is concurred in by Chief Justice Gibson and two associate Justices.

A dissenting opinion by Justice Carter, Justice Schauer concurring, and Justice Edmonds, was also filed.

These opinions are appended to this Statement. No earlier opinions were rendered in this case.

The decision and opinion of the Supreme Court sustains the constitutionality of the ordinance involved against all attacks by the respondent Gospel Army.

Said opinion and decision holds that charitable activities of a religious organization may be severed by statutory enactment from the purely religious activities thereof, although their integration is such that the charitable activities thereof are in furtherance of the purely religious.

In that behalf the opinion reads:

> "Many activities prompted by religious motives can hardly be differentiated from secular activities. If the applicability of government regulation turned on the religious motivation of activities, plausible activities would multiply and in the end vitiate any regulation. 'Civil liberties, as guaranteed by the Constitution, imply the existence of an organized society maintaining public order without which liberty itself would be lost in the excesses of unrestrained abuses. * * * Where a restriction of the use of highways * * * is designed to promote the public convenience in the interest of all, it cannot be disregarded by the attempted exercise of some civil right which in other circumstances would be entitled to protection. One would not be justified in ignoring the familiar red traffic light because he thought it his religious duty to disobey the municipal command or sought by that means to direct public attention to an announcement of his opinions.' (Cox v. New Hampshire, 312 U. S. 569, 574.) In Prince v. Massa-

chusetts, 321 U. S. 158, it was contended that religious liberty was abridged by the application of a statute regulating child labor to a guardian who permitted her minor ward to distribute religious literature on the streets at night. In vindicating the state's power to regulate in this way the dissemination of religious, the court declared: 'The parent's conflict with the state over control of the child and his training is serious enough when only secular matters are concerned.' * * *

"The very worthiness of such purposes creates a risk that the charitable impulses of people may be taken advantage of by solictors who would collect funds under false pretenses or retain for themselves an undue percentage of what they collected. Fraud in the solicitation of charitable contributions can be most effectively controlled by measures such as the regulation in question requiring the presentation of information to enable the public to determine the nature and worthiness of the purpose for which the solicitation is made, and requiring proof of the good character and reputation of paid solicitors. * * *

"The ordinance involved in the present case specifically exempts solicitations for religious purposes only; its object is to regulate all solicitations for charitable purposes" (27 A. C. 258, 262).

Again the opinion states:

"The trial court erroneously concluded that because plaintiff solicits funds for charitable purposes as part of its religious program its solicitations are solely for religious purposes within the meaning of the ordinance. * * * The ordinance specifically differentiates charitable and religious purposes. No person may solicit 'any contribution for any charitable purpose' without complying with the requirement of the ordinance. * * * The intention to maintain a sharp differentiation between charitable and religious purposes is apparent. * * * The solicitation of funds to provide food, shelter, and clothing for

those in distress is clearly for a charitable purpose and is therefore regulated by the ordinance" (27 A. C. p. 263).

Thus the decision upholds this differentiation, approves thereof, and decides that it does not violate the plaintiff's right to freedom of religion or the exercise thereof as guaranteed by the Fourteenth Amendment.

The foregoing language of said opinion also indicates that the justification for said segregation and the regulation of religious charities is the public welfare in protecting the people from possible fraud, and to that effect the opinion quotes with approval from *Thomas* v. *Collins* U. S., 65 Sup. Ct. 315, as follows: "The modern state owes and attempts to perform a duty to protect the public from those who seek for one purpose or another to obtain its money. When one does so through the practice of a calling, the state may have an interest in shielding the public against the untrustworthy, the incompetent, or irresponsible, or against unauthorized representation of agency" (27 A. C. p. 261).

Segregation of charitable activities from religion as established in said ordinance being thus sustained, in considering attacks upon the constitutionality of the individual sections, the opinion evaluates them as regulations of charitable associations and solicitors for charity only, and as being freed from all limitations which would otherwise demand consideration as restraints upon religious freedom.

The sections so judged are 44.01 to 44.19 of said ordinance (excluding the Second Hand Dealers subdivision of 44.19). The opinion declares: "We find nothing unduly burdensome or unreasonable in any of these provisions (27 A. C. p. 250).

The opinion quotes, cites, or cursorily describes in the text the many sections pertinent to the issues involved.

Said decision and opinion then upholds the constitutionality of provisions of said ordinance which were challenged by the Gospel Army's brief on grounds of arbitrary discrimination and lack of standards for the guidance of the city officials in the exercise of powers, in the following language: "In our opinion the classifications effected by this ordinance and the standards provided are adequate." (27 A. C. p. 255.)

Aside from the foregoing generalizations the opinion and decision of the State Supreme Court takes notice of certain of the ordinance provisions concerning the class of solicitor defined by the ordinance as "promoters." (27 A. C. pp. 253-256.) Concerning them and some other sections of the ordinance the opinion reads: "In our opinion the classifications effected by this ordinance is reasonable and the standards are adequate." (27 A. C. p. 255.) Later the opinion singles out two provisions applicable to promoters, and upholds them. It is said:

> "The requirement that promoters and the solicitors working under them submit proof of their good character and reputation does not discriminate against plaintiff or other religious organizations or censor their religious beliefs, nor does the regulation vest arbitrary power in the administrative board in authorizing it to withhold a license if it is not satisfied that the applicant is of good character and reputation. Such a requirement is common in statutes regulating admission to professions and occupations involving duties of a fiduciary character. (27 A. C. p. 262) * * *.
>
> "The license fee is a reasonable one, covering the expenses of investigations and adminstration.
>
> "The board has no discretion to withhold a license if the applicant's good character and reputation and

his financial responsibility are established and the required bond is filed. The board is not free to deny licenses, but must act reasonably in the light of the evidence presented. (27 A. C. p. 262.)

"The provision empowering the board to revoke a license in case of unfair, unjust, inequitable or fraudulent practices of solicitation is neither vague nor uncertain and affords no possibility for the censorship of religious beliefs." (27 A. C. p. 263.)

The first question decided in said opinion pertains to the subdivision of Section 44.19 of the ordinance involved which is numbered 24.01 and deals with "Pawn Brokers, Second Hand Dealers and Junk Dealers." Substantially all of the pertinent provisions of this section are enumerated, among which as set forth in the opinion are the following:

"Section 24.01 of the Los Angeles Municipal Code defines a 'junk dealer' as 'a person having a fixed place of business in this City who goes from house to house or from place to place, gathering, collecting, buying, selling or otherwise dealing in any old rags, sacks, bottles, cans, paper, metal or other articles commonly known as junk.' A 'secondhand dealer' is 'a person engaging in, conducting, managing, or carrying on the business of buying, selling or otherwise dealing in secondhand goods, wares or merchandise.' Junk dealers and secondhand dealers must obtain a permit to engage in business from defendant City's Board of Police Commissioners. The following 'Requisites of Permits' are set forth in subsection (c) of Section 24.01: '(1) Persons desiring to obtain a permit to conduct, manage or deal in any business mentioned in subsection 'a' of this Section shall file an application in writing with the Board specifying by street and number the place where such business is proposed to be conducted or carried on; junk collectors having no fixed place of business shall specify in such application their residence by street number. The application shall be

signed by the applicant and shall contain his residence address. (2) Before receiving an application for any permit the Board shall require the payment of such fees as are hereafter specified. (3) Upon receipt of such application the Board shall cause to be investigated the business of the applicant and the location at which applicant proposes to engage in business as specified in said application. Thereafter the Board may issue a permit to the applicant which shall be effective for the remaining portion of the current year. * * * (27 A. C. p. 248.)

"The fees prescribed are set forth in subsection (d): '(1) Applications for permits other than provided for in this subsection shall pay the sum provided in Section 22.10: (2) Application for special permits, the sum of $50.00; (3) Applications for annual permit renewal, the sum of $25.00; * * *

"Holders of permits must keep a complete record of all goods purchased or received by them, which is open to inspection by any member of the police department. They must also file with the Chief of Police daily reports on prescribed forms of the goods purchased or received during the preceding day, describing the article and specifying the hour of the day when it was acquired, the name and address of the party from whom it was acquired, the height, age, sex, complexion, and other characteristics of that person. The hours of business are prescribed. Secondhand dealers must keep the articles received by them 21 days before selling them. The period prescribed for junk dealers is 3 days" (27 A. C., pp. 249-250).

The opinion decides as follows:

"The foregoing provisions are reasonable, and the standards prescribed are adequate" (27 A. C., p. 250).

It is further said:

"Regulation of the business of junk dealers and secondhand dealers is designed to protect the public interest by preventing such dealers from becoming out-

lets for stolen goods. No question arises as to the constitutionality of such regulation when the business regulated is not carried on by a religious organization.

• • •

"Business carried on by a religious organization cannot be differentiated, for the reasons set forth below with respect to the validity of the regulation of plaintiff's solicitation of funds for charity" (27 A. C., pp. 250, 251).

Thus the opinion indicates that the basis for upholding the constitutionality of the foregoing provisions as applicable to religious organizations and to the Gospel Army is the Court's holding, later in the opinion, that in segregating charitable activities which are in furtherance of purely religious activities of a religious organization from religion and those activities which are solely religious, the instant Charities and Relief Ordinance does not offend the right of freedom of religion or its exercise, and, hence, that no question of inhibited prior restraints on such right can arise in this case.

In the light of the dissenting opinions written by Justices Carter and Edmonds the substantial issues decided are clearly revealed.

Justice Carter fills eleven pages with analysis of Sections 44.01 to 44.19 inclusive whose validity is the subject of dispute in the briefs (27 A. C., pp. 272-284). He discusses them not only from his viewpoint that the charities of a religious organization cannot be segregated from its religion and religious activities, but also on the basis of their application to charities as secular, and concludes that as regulations of "religio-charities" nearly all of the provisions of said ordinance create inhibited prior restraints upon plaintiff's right of fredom of religion and its exercise, and that, as regulations of charity and relief, as a business, many are void, as arbitrary and unreasonable, vague and

indefinite as to standards, or violative of the equal protection of laws guaranteed by the Fourteenth Amendment, because of unreasonable discrimination.

The dissenting opinion of Justice Edmonds follows the same pattern as to substance, as that written by Justice Carter and concurred in by Justice Schauer. He points out additional provisions which, he argues, are arbitrarily discriminatory, and others which he purports to show are violative of plaintiff's right to the free exercise of religious freedom.

Both dissenting opinions approve and rely largely upon *In re Darte*, 172 Cal. 47, and also *Cantwell* v. *Connecticut*, 310 U. S. 296, L. Ed. 1219, and *Murdock* v. *Pennsylvania*, 319 U. S. 105, 87 L. Ed. 1292.

Justice Edmonds discusses Section 24.01 of said ordinance (it being a portion of Section 44.19), and says:

> "Turning to the other provision of the Los Angeles Municipal Code which is in controversy, although generally speaking, the business activities of a religious organization come within the scope of regulations tending to protect the morals, safety or general welfare of the public, section 24.01 relating to dealers in second-hand goods is also unconstitutional for the reason that it sets no standard to which an applicant for a license must conform. To carry on the business of a 'second-hand dealer,' one must file an application in writing with the Board (of Police Commissioners) specifying by street and number the place where such proposed business is proposed to be conducted or carried on; • • • The application shall be signed by the applicant and shall contain his residence address. Upon receipt of such application the board shall cause to be investigated the business of the applicant and location at which applicant proposes to engage in business as specified in said application. Thereafter the board may issue a permit to the applicant which shall be effective for the remaining portion of the current year.'

"This enactment states no grounds justifying a denial of the application, specifies no time within which an investigation must be made, makes no provision for hearing upon the application, and by the use of the word 'may,' impliedly allows the board to grant or withhold official favor for any reason which whim or fancy may dictate. No standard of character or business responsibility is set for the guidance of the board nor are there any qualifications specified for one desiring to deal in secondhand goods. Such legislation has uniformly been held not to measure up to the requirements of constitutional guarantees. (*In re Dart, supra; Hewitt* v. *State Board of Medical Examiners, supra; Schaezlein* v. *Cabaniss, supra; County of Los Angeles* v. *Hollywood Cemetery Assn., supra; Ex parte Sing Lee, supra; Yick Wo* v. *Hopkins, supra; Hoyt Bros., Inc.* v. *Grand Rapids, supra.*)

"Under these circumstances, in my opinion, as the right of the Gospel Army and those acting in its behalf to solicit contributions for either religious or charitable purposes is a property right, the unlawful interference with which will cause irreparable injury, the trial court properly enjoined the enforcement of the ordinances here challenged (*Brock* v. *Superior Court,* 12 Cal. 2d 605 (86 P. 2d 805); *Bueneman* v. *City of Santa Barbara,* 8 Cal. 2d 405 (65 P. 2d 884, 109 A. L. R. 895), and the judgment should be affirmed" (27 A. C., pp. 298, 299).

Replying to the principal alleged justification given in the majority opinion for nearly all of the regulations contained in the ordinance and the plan and system established by it, to-wit, the prevention of fraud and safeguarding the public from deception upon the part of charitable and religious organizations and their solicitors and promoters, Mr. Justice Carter quotes from *Cantwell* v. *Connecticut,* 310 U. S. 296, and *Schneider* v. *Irvington,* 308 U. S. 161, and states:

"That some fraud may escape detection is to be anticipated. This is more or less true in all walks of life

despite volumes of protective legislation. But the diversion to wrongful channels of some part of the public contribution to charity is not a major catastrophe when weighed against the cost of protection effected only by carving a large slice from the bill of rights. Indeed it may be asked whether any community can afford to undertake a regulatory program which may largely deprive the public of the opportunity to hear and respond to pleas of other than organized and municipally approved charities, thus stifling the growth and character development gained by the exercise of pity, compassion, and generosity. Small are the sums contributed by the average community to charity when compared with the large amounts customarily spent for luxuries and entertainment. In one sense the benefit of the opportunity to give where the right hand knows not what the left hand is doing is of more intrinsic value than the actual raising of the money, for all are in need of the spiritual enrichment which comes of free will offering. There are few housewives who will not cheerfully give from their larder to ten itinerant mendicants rather than run the risk of turning away hungry one man worthy of alms. • • •

"All of this has been given recognition in the decisions of the United States Supreme Court. In the Cantwell case it is said at pages 308 and 310, 'But the people of this nation have ordained in the light of history, that, in spite of the probability of excesses and abuses, these liberties are, in the long view, essential to enlightened opinion and right conduct on the part of the citizens of a democracy. The essential characteristic of these liberties is, that under their shield many types of life, character, opinion and belief can develop unmolested and unobstructed. Nowhere is this shield more necessary than in our own country for a people composed of many races and of many creeds. • • •

"*Equally obvious is it that a state may not unduly suppress free comunication of views, religious or other, under the guise of conserving desirable conditions.* Here we have a situation analogous to a conviction un-

der a statute sweeping in a great variety of conduct under a general and indefinite characterization, and leaving to the executive and judicial branches too wide a discretion in its application." (Italics ours.)

"Again it is said in the Schneider case at page 164: 'Conceding that fraudulent appeals may be made in the name of charity and religion, we hold a municipality cannot, for this reason, require all who wish to disseminate ideas to present them first to police authorities for their consideration and approval, with a discretion in the police to say some ideas may, while others may not, be carried to the homes of citizens; some persons may, while others may not disseminate information from house to house. Frauds may be denounced as offenses and punished by law. Trespasses may similarly be forbidden. If it is said that these means are less efficient and convenient than bestowal of power on police authorities to decide what information may be disseminated from house to house, and who may impart the information, the answer is that considerations of this sort do not empower a municipality to abridge freedom of speech and press.' The same is true with respect to abridgment of the right of religious freedom" (27 A. C., pp. 267-268).

At another point the dissent of Justice Edmonds refers to the statement in the opinion of the Court that the Department of Social Service issues Information Cards (permits to solicit) automatically after a Notice of Intention is filed, and he answers, that the Information Card "is not issued as a matter of course upon filing of the Notice of Intention" (27 A. C., p. 292).

Thereafter, and within the time allowed by law and rules of the State Supreme Court, plaintiff petitioned said court for rehearing of said appeal, and in said petition claimed that the opinion and decision rendered, as above set forth, erred in holding said ordinance, and each of its provisions, valid, and not violative of the Fourteenth

Amendment to the Constitution of the United States, or either clause thereof, and not in any respect infringing the right of freedom of religion or the right to exercise it by Gospel Army in particular, and not an impairment of the religious or charitable organizations generally, or the property rights of plaintiff as guaranteed by said Fourteenth Amendment.

In said petition (p. 2) it was claimed that "in upholding and enforcing the unconstitutional provisions the instant decision, itself, violates said constitutional rights and contravenes said clauses."

Said petition points out the "formula" of determining cases on appeal wherein the rights of freedom of the press or of religion conflict with other constitutional rights, as announced in *Schneider* v. *Irvington*, 308 U. S. 147, and asserts that said opinion in this case fails to follow and conflicts with said formula rule.

It claims that Justice Carter's dissenting opinion follows said formula rule and that both dissenting opinions demonstrate, section by section, that each of the sections of said ordinance dealing with solicitors, promoters and organizations for which they solicit, contains provisions which constitute prior restraints, upon the exercise of the right of religious freedom as applied to any religious organization which solicits and dispenses donations for charity, as well as when applied to the right to dispense charity, and said petition claims that said State Supreme Court erred in holding to the contrary.

Said petition (pp. 13, 14) analyzes the decision in *In re Darte*, 172 Cal. 47, and claims that it is decisive of every legal proposition presented in the instant case and thereby upholds plaintiff's contentions as set forth in its brief on appeal, and that said opinion and decision of said State Supreme Court erred in refusing to follow the decision in the *Darte* proceeding in deciding each issue thus presented.

Said petition (pp. 12, 13) claims that said opinion and decision herein erred in failing to consider the testimony of the defendants' witnesses showing that as construed and applied by defendants said ordinance authorizes said Department and Board to deny applications by persons for permits to solicit and for licenses to solicit, and of charitable organizations for such permits and licenses in their discretion and regardless of full compliance with all applicable provisions of said ordinance, quoting *Cantwell* v. *Connecticut*, 310 U. S. 296, *Yick Wo* v. *Hopkins*, 118 U. S. 356, and *Brock* v. *Superior Court*, 12 Cal. (2d) 603.

Said petition for rehearing (p. ——) especially criticizes the opinion and decision of said Supreme Court herein in upholding the provisions of the Second Hand and Junk Dealers section of said ordinance as against all attacks thereon in plaintiff's brief on appeal, by which it was contended that such provisions and the whole thereof are violative of the due process clause of the Fourteenth Amendment to the Federal Constitution and constitute prior restraints upon the exercise of the right of freedom of religion and to dispense charities and thereby infringe such rights of the Gospel Army and of its solicitors and promoters, and that certain of said provisions violate the equal protection of the laws clause of said Fourteenth Amendment, and that certain of them are void under the same amendment as delegations of powers without providing standards for their exercise, or as so vague and indefinite as to be incapable of enforcement and permitting the capricious, arbitrary enforcement thereof based upon prejudice or favoritism.

The following are excerpts and portions of said petition for rehearing, set forth therein as exhibiting error in said opinion and decision of said State Court of last resort:

> "Justice Carter's dissenting opinion points out the unwarranted character of the Board's rule which pro-

vides that the Department shall determine whether an organization is soliciting for charity or for religion and that to entitle a religious organization to solicit for charity 50% of the amount collected must go to charitable purposes, otherwise no permit will be given to the organization and no license will be sold to the 'promoters.'" (Petition p. 4.)

"Quoting from *Cantwell* v. *Connecticut*, 310 U. S. 296, and *Matter of Dart*, 172 Cal. 47, both dissenting opinions convincingly demonstrate that charity is an integral part of religion as preached and practiced by the true followers of Jesus and of the Jewish faith and that such integration is not subject to severance into two segments, one of religious activities and the other of secular affairs. However, the dissenting opinions point out that this Court's decision 'does just that' and fails to justify its action by any relevant or applicable authority." (Petition pp. 4, 5.)

"Perhaps the most outstanding inadequacy of the Court's opinion herein appears from the careful and seemingly unanswerable analysis of the pivotal provisions of the Charities and Relief Ordinance in the dissenting opinions which expose violation after violation of the guarantees of the Fourteenth Amendment and of respondent's right to exercise freedom of religion, as contrasted with an entire absence of such analysis in the Court opinion, and its mere recital in the footnotes of those provisions whose patent vices are waived aside by the Court's 'generalizations': 'In our opinion the classifications effected by this Ordinance is reasonable and the standards provided are adequate,' and, 'We find nothing burdensome or unreasonable in any of these provisions.' (Op. p. 15, lines 7-8.)" (Petition p. 5.)

"This Court's decision, viewed in the light of the dissenting opinions, is obviously inadequate in its approval and judgment of terms employed in said Ordinance purporting to fix standards for officers to follow in administering its provisions, such as that in Section 44.19, that 'if satisfied' that the applicant is of 'good

character and reputation' the officials may grant a promoter a license.

"Another example is the provision in Section 44.03 pertaining to the contents of the information card which authorizes the Board to insert therein anything which, 'in the opinion of the Board' may be of assistance to the public to determine 'the nature and worthiness' of the purpose of the solicitation.

"Since these and other provisions of the same type give administrative officials unlimited power to hamper or to render wholly ineffective the promoter's solicitations and, also, to indefinitely delay or even deny the issuance of licenses, permits and information cards, the absent treatment accorded them in the majority opinion renders its bald conclusions upholding them arbitrary and apparently unreasonable." (Petition pp. 5, 6.)

"To provide a legal foundation for the blanket approval in the opinion of this Court of the many burdensome, prohibitive, standardless and unreasonable provisions of said Ordinance, numerous decisions from many jurisdictions are cited to sustain the proposition that activities characteristic of the secular life are subject to regulation, even though they are carried on in the name of religion.

"Justice Edmonds points out that none of said cases are in point; that only two concern the solicitation of funds or goods, one of which pertained to the activities of minors, only, and the other does not pass upon any question herein involved. Justice Edmonds also shows that the decisions relied upon in the majority opinion to sustain its holding that a promoter may be required to 'submit proof of his good character and reputation' have no proper application to solicitation for charity, and that the section of the instant Ordinance in question cannot be reconciled with the language in *Cantwell* v. *Connecticut*, supra, which limits prior restraints in such cases so that they will not bar the activities of the mendicant preacher or the traveling colporteur.

"Also, that the requirement that the promoter or solicitor must satisfy the Board that he is 'equal to

the financial responsibility incident to the proposed solicitation' has not been harmonized with the *Cantwell* decision.

"The majority opinion makes no attempt to reconcile the numerous prior restraints on solicitation for religion or charities with the limitation placed thereon by the United States Supreme Court, although the dissenting opinion clearly points out that such limitation forbids more than identification and registration requirements, and show by elucidation of individual sections that the instant the Charities and Relief Ordinance is filled with unconstitutional prior restraints." (Petition pp. 6, 7.)

"The majority opinion errs in holding that, as a matter of law, the donations procured by respondent's solicitors and promoters were and are charitable and not religious. It thus ignores the findings of the trial court which have not been challenged by appellant and therefore are unimpeachable.

"The decision of this Court glosses over the vague and indefinite terms with which said Ordinance abounds, no doubt unintentionally, using the generalities herein-before mentioned by which it is said 'we find nothing unduly burdensome or unreasonable in any of those provisions' and 'in our opinion the classification affected by this Ordinance is reasonable and the standards provided are adequate.'

"Yet, the dissenting opinions show many instances of heavily onerous requirements; for example, Justice Carter points out that under Section 44.05 one who would solicit for charity, must file a written notice of intention containing complete information on 'eleven comprehensive phases' of the undertaking, which would require a very liberal educational background to supply such statistics, and the mere enumeration of these information demands shows that the jurist's assertion, 'the much maligned income tax forms * * * are no more complex and demanding than is this notice of intention in its requirements of itemized data,' is entirely true.

"Both dissenting opinions, demonstrate by quoting Ordinance sections and pointing out their consequences, that endless delays are authorized and prohibitive labor and expensive booking systems are required of both solicitor and the charitable association for whom donations are to be sought.

"But the Court's opinion brushes aside similar elucidations of said sections in respondent's brief upon a most optimistic and trusting theory, to-wit, that this Court cannot assume that it (the department) will abuse its authority. This doctrinaire overlooks long settled law, which is:

"*The question of the Constitutionality of an Act is to be determined not by what has been done under it, but by what may be done under, and by virtue of its authority.* (6 R. C. L., p. 82; *In re Lambert,* 134 Cal. 626, 86 A. S. R. 296, 55 L. R. A. 856); Yicky *v.* Hopkins, 118 U. S. 374.)" (Petition pp. 8, 9.)

"The decision of this Court which upholds the regulation of respondent's store under the Ordinance section 24.01, relating to second-hand dealers is shown by Justice Edmonds to be unconstitutional because it establishes 'no standard of character or business responsibility' to guide the Board and no 'qualifications are specified for one desiring to deal in second-hand goods,' and it authorizes 'the Board to grant or withhold official favor for any reason which whim or fancy may dictate.'

"Mere reading of said section can leave no doubt of the soundness of the above quoted assertions, and the cases cited by Justice Edmonds establish that such an enactment flagrantly infringes the 14th Amendment to the Federal Constition and both clauses thereof.

"Also, respondent's brief (pp. 17, 18) points out that the pawnbrokers, second-hand dealers ordinance contravenes the 14th Amendment to the Federal Constitution, because the regulations are unnecessarily burdensome, especially as applied to activities which are carried on as an incident to the exercise of religion or by charitable organizations.

"Reliance has been placed upon *In re Dart*, 172 Cal. 47, to which respondent still adheres because that decision is fully supported by decisions of the United States Supreme Court, to-wit: *Cantwell* v. *Connecticut*, *Murdock* v. *Pennsylvania*, both *supra*, and *Schneider* v. *Irving*, 308 U. S. 147." (Petition pp. 9, 10.)

"The Instant Opinion and Decision, Itself, Violates the 14th Amendment to the Federal Constitution

"It violates said 14th Amendment in that it approves, confirms and enforces the provisions of said Charities and Relief Ordinance concerning 'promoters' who solicit goods for church stores or sell the same (the proceeds from which sales are used exclusively in furtherance of the religious activities of churches), which provisions require promoters to apply for a license, provide a $2,000 bond, furnish much irrelevant data about themselves and the religious organization which they represent as specified in the ordinance, and endless data which the Board may require from time to time; pay for an investigation of themselves by the Board; wait a period without limit for the Board to act, and if and when, a license is granted, to solicit under handicaps which would necessarily render their efforts ineffective and so expensive that no profits could be left from any goods donated if the promoter were paid a living wage—all of which is pointed out in the dissenting opinions herein.

"It denies to respondent the equal protection of the laws in that it approves, confirms and enforces the provisions of said Charities and Relief Ordinance by which the Board of Social Service Commissioners is authorized to arbitrarily, capriciously and partially grant rights and privileges to its favorites among the Social Service Agencies of Los Angeles and to deny such rights and privileges to other organizations of the same class, including respondent, as has been pointed out under caption I herein (Petition pp. 16, 17).

"It violates said Fourteenth Amendment because it approves as legal and enforces provisions of the Charities and Relief Ordinance concerning 'solicitors' which

are equally burdensome, oppressive and arbitrary with those regulating 'promoters,' and are similar to such promoter provisions, except that, no bond is required of solicitors and the fee for a permit is less—all of which the instant dissenting opinions, as well as respondent's reply brief herein show.

"It approves provisions of said Charities and Relief Ordinance which delegate to the Board and its officers power to refuse the issuance of an information card to promoters and permits to solicitors for religious organizations for their religio-charities and to base such refusal upon the Board's own investigation and without a hearing." (Petition p. 17).

"To make its own determination as to whether solicitations are for charity or for religion, and said Ordinance provides that unless donations are collected exclusively for religious purposes they are subject to regulation as charity, all of which this Court has approved." (Petition pp. 17, 18).

"It fails, entirely, to consider the interpretation placed upon the ordinance herein involved by the Board and its officers which administer it, under which interpretation said ordinance gives such Board full authority to arbitrarily refuse to issue an information card to any religious organization or to issue a license to its promoters or a permit to its solicitors, and in these and other respects (pointed out in respondent's brief), said Board has construed and applied said ordinances so as to render them violative of respondent's rights of freedom of religion and the due process clause of the Fourteenth Amendment; overlooking and failing to consider the foregoing interpretation and application of said Ordinance the instant decision, itself, denies to respondent the equal protection of the laws and deprives respondent of property rights and the right of religious liberty without due process of law.

"Upon all and each of the foregoing grounds respondent requests that a rehearing of its appeal be ordered by this Court." (Petition pp. 17, 18).

Robert H. Wallis,
Counsel for Appellant.

APPENDIX TO JURISDICTIONAL STATEMENT

Opinion of the Court

TRAYNOR, J.:

Certain ordinances of the City of Los Angeles regulate transactions in secondhand goods and solicitations for charitable purposes. Plaintiff, an incorporated religious organization, brought this suit to enjoin the enforcement of these ordinances as applied to it on the ground they abridged its religious liberty in violation of the Constitution of the United States and the Constitution of California. The trial court found that plaintiff is "engaged exclusively in the promulgation, by literature and word of mouth, of its religious beliefs, by and through its auxiliaries, and in the procuring of donations in the form of money and articles of value in the prosecution and furtherance of its religious activities." It enjoined defendants from "further interference and threatened acts, which would in any way prevent the free exercise of the religious liberty and freedom of worship of the said Plaintiff." Defendants appeal.

The finding of the trial court must be viewed in the light of the evidence, which is undisputed. Religious services at plaintiff's mission are conducted by a minister ordained by it whose compensation depends entirely on solicited contributions. Plaintiff engages in missionary work, distributes the New Testament and religious tracts free to the public, and gives assistance to those in need. It collects salvage from the public to obtain funds to propagate its religious doctrines and to provide aid to the poor. Some of the salvage is sold in a secondhand goods store operated by plaintiff; some, such as clothing, is distributed to the poor; goods not suitable for further use go directly to a salvage mill. The salvage is collected by plaintiff's "industrial solicitors" in four of plaintiff's trucks. The money received from the sale of secondhand goods in plaintiff's store is used to meet the cost of operating the store, including the compensation paid to the manager and the solicitors. Whatever remains is paid into plaintiff's treasury. Ninety per cent of the money received for the mill

material goes to the drivers of the trucks; the remainder is turned over to the manager of the store for plaintiff's treasury.

Other employees of plaintiff solicit money from the public. Solicitors make the object of their mission known by showing to prospective donors a printed card stating that "the bearer whose signature is hereon attached for identification is duly authorized to solicit money, food, clothing or any other useful articles that will help the Gospel Army to carry on their religious home missionary and evangelical work among the poor and under-privileged." About fifty per cent of the funds raised is absorbed by the cost of soliciting, including the compensation of the solicitors, which is paid on a percentage basis. The funds remaining are used to pay the cost of furnishing tracts and religious literature free to the public and to supply food, lodging, clothing and car fare to the poor.

Section 24.01 of the Los Angeles Municipal Code defines a "junk dealer" as "a person having a fixed place of business in this City who goes from house to house or from place to place, gathering, collecting, buying, selling or otherwise dealing in any old rags, sacks, bottles, cans, paper, metal or other articles commonly known as "junk." A "secondhand dealer" is "a person engaging in, conducting, managing, or carrying on the business of buying, selling or otherwise dealing in secondhand goods, wares or merchandise." Junk dealers and secondhand dealers must obtain a permit to engage in business from defendant city's Board of Police Commissioners. The following "Requisites of Permits" are set forth in subsection (c) of Section 24.01: "(1) Persons desiring to obtain a permit to conduct, manage or deal in any business mentioned in subsection 'a' of this Section shall file an application in writing with the Board specifying by street and number the place where such business is proposed to be conducted or carried on; junk collectors having no fixed place of business shall specify in such application their residence by street number. The application shall be signed by the applicant and shall contain his residence address. (2) Before receiving an application for any permit the Board shall require the payment of such fees as are hereafter specified. (3) Upon re-

ceipt of such application the Board shall cause to be investigated the business of the applicant and location at which applicant proposes to engage in business as specified in said application. Thereafter the Board may issue a permit to the applicant which shall be effective for the remaining portion of the current year. (4) Persons operating under the provisions of this Section shall be required to secure an annual renewal of such permit commencing January 1st of the succeeding year in which such permit was granted. (5) No person holding a permit to conduct, manage, carry on or deal in any business mentioned in subsection 'a' of this Section shall buy, sell or otherwise deal in secondhand jewelry, precious stones, precious metals (including old gold), watches or other similar secondhand merchandise without first applying for and receiving a special permit therefor from the Board in the manner provided in this Section for securing ordinary permits." The fees prescribed are set forth in subsection (d): "(1) Applications for permits other than provided for in this subsection shall pay the sum provided in Section 22.10; (2) Applications for special permits, the sum of $50.00; (3) Applications for annual permit renewal, the sum of $25.00; (4) applications for changing location of place of business for which a permit has been granted, the sum of $10.00; (5) Change of ownership, the sum of $10.00, to be applicable only in cases where the new owner is already operating under a permit issued pursuant to provisions of this Section." Subsection (e) provides: "(1) The Board shall not grant any permit provided for in this Section to persons who fail, refuse or neglect to comply with the laws and ordinances relating to and regulating the business for which such permit is sought. (2) Persons applying for or obtaining permits under the provisions of this Section shall comply with the provisions of this Section." Subsection (f) provides for the revocation of permits: "Any permit issued under the provisions of this Section may be revoked or suspended upon the grounds provided for in this Section: (1) * * * If persons holding permits under the provisions of this Section shall violate any of the provisions of this Section or any provisions of any other ordinance or any law relating to or regulating any such business, or shall conduct or carry on

such business in an unlawful manner, the Board, in addition to any other penalties provided by this Code, shall revoke such permit issued to such person; (2) * * * Permits granted pursuant to this Section shall be revoked only in the manner provided in Section 22.02 of this Code; (3) * * * No permit shall be granted to any person to conduct, manage, carry on or deal in any business mentioned in subsection 'a' of this Section whose permit has been revoked by the Board until six (6) months have elapsed after such revocation." Holders of permits must keep a complete record of all goods purchased or received by them, which is open to inspection by any member of the police department. They must also file with the Chief of Police daily reports on prescribed forms of the goods purchased or received during the preceding day, describing the article and specifying the hour of the day when it was acquired, the name and address of the party from whom it was acquired, the height, age, sex, complexion, and other characteristics of that person. The hours of business are prescribed. Secondhand dealers must keep the articles received by them 21 days before selling them. The period prescribed for junk dealers is three days. With respect to certain articles classed as scrap, junk dealers are exempted from the provisions requiring the keeping of records, the filing of reports, and the keeping of articles for three days. There are comparable exemptions for secondhand dealers. If a claim is made that property in the hands of the holder of a permit is stolen, the board, in the event no court action is pending, may determine whether or not the property was stolen from the claimant and order its return if it was. If such an order is disobeyed, the board may revoke the permit. The foregoing provisions are reasonable, and the standards prescribed are adequate. (In re Holmes, 187 Cal. 640, 646 (203 P. 398); Co-operative Junk Co. *v.* Board of Police Commissioners, 38 Cal. App. 676, 679 (177 P. 308); Zemansky *v.* Board of Police Commissioners, 61 Cal. App. 2d 450, 453-455 (143 P. 2d 361); see 30 A. L. R. 1427; 88 A. L. R. 970, 972; 7 Cal. Jur. 10-yr. Supp. 366; 33 Am. Jur. 336-339, 355; 47 Am. Jur. 555).

Regulation of the business of junk dealers and secondhand dealers is designed to protect the public interest by

preventing such dealers from becoming outlets for stolen goods. No question arises as to the constitutionality of such regulation when the business regulated is not carried on by a religious organization. (Lewis *v.* Quinn, 217 Cal. 410, 413 (19 P. 2d 236); In re Holmes, supra; Co-operative Junk Co. *v.* Board of Police Commissioners, supra; Zemansky *v.* Board of Police Commissioners, supra; see 30 A. L. R. 1427; 88 A. L. R. 970, 972; 7 Cal. Jur. 10-yr. Supp. 366; 33 Am. Jur. 336-339, 355; 47 Am. Jur. 554). Business carried on by a religious organization cannot be differentiated, for the reasons set forth below with respect to the validity of the regulation of plaintiff's solicitation of funds for charity.

Sections 44.01 to 44.19 of the Los Angeles Municipal Code regulate solicitations of funds for charity. The term "charitable" includes "Philanthropic, social service, benevolent, patriotic, either actual or purported." The term "contribution" includes "alms, food, clothing, money, property or donations under the guise of a loan of money or property." (#44.01). Certain provisions, applicable to solicitors or charitable contributions in general, are designed primarily to secure information that will assist the public in judging the nature and worthiness of the cause for which the solicitation is made and to insure the presentation of such information to prospective donors. We find nothing unduly burdensome or unreasonable in any of these provisions. Section 44.05, which is quoted in the margin,[1]

[1] "No person shall solicit, nor shall any officers or member of any association authorize any person to solicit, any contribution for any charitable purpose unless, within the fiscal year of the City in which such solicitation is made and at least within ten (10) days prior to the beginning of such solicitation, there shall have been filed with the Department, on a form furnished by said Department, by such person or association upon whose behalf the solicitation is made, written Notice of Intention to solicit such contribution, which notice shall contain complete information as follows:

"(a) The purpose of the solicitation and use of the contribution to be solicited;

"(b) A specific statement, supported by reasons and, if available, figures, showing the need for the contribution proposed to be solicited;

"(c) The character of such solicitation and how it will be made or conducted;

requires any person who solicits for any charitable purpose to file with the Department of Social Service a notice of intention to solicit ten days before the solicitation. This notice must contain, among other things, information regarding the purpose, character, method, and estimated expenses of the solicitation, the need for the contribution to be solicited, the proposed use of the solicited funds, the amount that will remain available for charitable purposes over expenses, the amount received from solicitations in the preceding calendar year, the expenses of such solicitations, and the amount that remained available for charitable purposes. The department may investigate the statements in the notice of intention. (#44.03(a).) Information cards setting forth the facts in the notice of intention and such other facts as in the opinion of the Board of Social Service Commissioners will be of assistance to the public in determining the nature and worthiness of the solicitation (Section 44.06 quoted in the margin *) are issued by the Department of Social Services for four cents per card.

"(d) The expenses of the solicitation, including salaries and other items, if any, regardless of from what funds such expenses are payable;

"(e) What portion of the contributions collected as a result of the solicitation will remain available for application to the specific purposes declared in the Notice of Intention as the object of the solicitation;

"(f) A specific statement of all contributions collected or received by such person or association within the calendar year immediately preceding the filing of such Notice of Intention. The expenditure or use made of such contributions, together with the names and addresses of all persons or associations receiving salaries, wages, compensation, commissions or emoluments from such contributions, and the respective amounts thereof;

"(g). The names and addresses of the officers and directors of any such association for which the solicitation is proposed to be made;

"(h) A copy of the resolution, if any, of any such association authorizing such solicitation, certified to as a true and correct copy of the original of such resolution by the officer of such association having charge of the records thereof;

"(i) A statement that the signers of such Notice have read and are familiar with the provisions of this Article and will require all solicitors engaged in such solicitation to read and be familiar with all sections of this Article prior to making any such solicitation."

* "There shall be filed with the Department with such Notice of Intention a statement of any agreement made with any agent, solicitor, promoter manager or conductor of such solicitation, together with a copy of each agreement which may be in writing. Within twenty-four hours after any

(#44.03(e).) The information cards, which are in effect permits to solicit, are issued automatically upon the filing of the required information and the payment of the four cents for each card. The department is given no authority to withhold such cards when these requirements are met, and we cannot assume that it will abuse its authority in order to withhold them. As this court said in In re Holmes, 187 Cal. 640, 647 (203 P. 398), quoting from In re Flaherty, 105 Cal. 558, 562 (38 P. 981, 27 L. R. A. 529) and Gaylord *v.* City of Pasadena, 175 Cal. 433, 437 (166 P. 348): " 'Laws are not made upon the theory of the total depravity of those who are elected to administer them; and the presumption is that municipal officers will not use these small powers villainously or, for purposes of oppression or mischief.' If this petitioner had applied for a permit under the requirement of the section of the charter above quoted, and been either whimsically or arbitrarily refused such permit, he might then, as is shown in Gaylord *v.* City of Pasadena, supra, have had recourse to the courts for relief from such unjust and arbitrary action."

Each solicitor must exhibit an information card to the prospective donor and must not make any misstatements. A solicitor must also carry written authorization from the association that he represents. The board may recall the cards and amend them if it receives additional information showing that any statements thereon are incorrect. The

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change in any such agreement or the making of any new or further agreement, a true copy of such change or agreement, if in writing, or if not, written details thereof, shall be filed with the Department. Whenever, in the opinion of the Board, the Notice of Intention filed with the Department does not disclose sufficient information for the public concerning the facts hereinabove required to be stated in such Notice or concerning the person or association making such solicitation or on whose behalf such solicitation is made, then, upon the request of said Department, there shall be filed, in writing, within forty-eight (48) hours after such request, such additional information as may be required by said Board upon the foregoing subjects. Provided, however, that the Board, for good cause, may extend the time for filing such additional information. The Notice of Intention and such additional information, if requested, shall be signed by such person intending to make such solicitation, or if by or on any association, by at least two officers of such association and shall be open to the inspection of the public."

board may not disallow a proopsed solicitation but it may investigate the statements in the notice of intention and the methods of making or conducting the solicitation; it may inspect the records of the person in charge of the solicitation and the association for whom it is made, and it may give such publicity to its findings as it deems best to reach the general public and persons interested. The association for whom the solicitation is made must maintain an accounting system recording the entry of all donations and disbursements. (#44.08.)

More restrictive provisions are applicable to promoters. A promoter is "any person who for pecuniary compensation or consideration received, or to be received, solicits or is engaged in the business of or holds himself out to the public as engaged in the business of soliciting contributions for or on behalf of any other person or any charitable association, corporation or institution, or conducts, manages or science. • • • It is sufficient to show what indeed appurpose; provided, however, that pecuniary compensation or consideration as used herein, shall include, but shall not be limited to, participation on a percentage basis in any fund solicited, or raised, for or on behalf of any other person, firm, association or corporation; provided, further, that no person who is a bona fide paid officer or employee of a social service agency endorsed by the Board of Social Service Commissioners, shall be considered a promoter within the meaning of this article." (#44.01.) The conditions that a social agency must meet to be endorsed by the Social Service Commission and the standards that govern the commission are set forth in a separate ordinance, the relevant part of which is quoted in the margin.[2] In our

[2] "Sec. 2. Said Commission shall have power:

"1. To investigate, when requested or permitted, by the officers or persons in charge thereof all charitable or philanthropic corporations or associations dependent upon public appeal or general solicitations for support, and submit quarterly, in writing, the result of such investigation to the Council.

"2. To endorse such of said charitable corporations or associations as shall apply to said Commission for endorsement and prove to the Commission that they have complied with the following provisions, namely:

"(a) That the title to any real property in the City of Los Angeles owned by such charitable corporation or association is vested in the name of

opinion the classification effected by this ordinance is reasonable and the standards provided are adequate.

A promoter must apply for a promoter's license. The application must set forth the applicant's qualifications and show that he is of good character and reputation. Persons working as solicitors for compensation under the promoter must be registered as solicitors. The board grants a promoter's license if it is satisfied that the applicant is of good character and reputation, is equal to the financial responsibility incident to the proposed solicitation and intends to conduct his business as promoter fairly and honestly. Similarly, before registering a solicitor, the board must be satisfied of his good character and reputation. A license fee of $25 is required for a promoter's license. A promoter must also file a $2,000 bond with the board to insure contributors against loss through theft. Solicitors must file a $500 bond and pay a registration fee of $1.00. The board may revoke a promoter's license, after a hearing, for any "unfair, unjust, inequitable or fraudulent" act of a promoter or his employees, or agents in making a

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said charity, if it be a corporation, or else in the name or names of a responsible trustee, or trustees under a declaration of trust or other written instrument, setting forth the rights of such charitable corporation or association therein, and recorded in the records of the County Recorder of Los Angeles County.

"(b) That the declared purpose for which such a corporation or association is organized are charitable or philanthropic, and not for the pecuniary profit of the members or associates thereof or any of them.

"(c) That for three months prior to its endorsement said charitable corporation or association has faithfully complied with the following provisions with reference to its accounts, namely: All funds received by it and all disbursements made by it, have been entered upon the books of its treasurer or other financial officer, receipts have been given or tendered for all money or other property donated to it, whenever required by law or ordinance; all expenditures other than petty cash to a reasonable amount have been made by checks signed by at least two officers of such corporation or association; that the bank book of such association or corporation has been balanced and reconciled with the books of account at reasonable intervals.

"(d) That no moneys of said corporation or association are on loan directly or indirectly to any officer, director, trustee or employee thereof, and that the corporation or association for a period of three months prior to its endorsement has not invested any moneys constituting part of its permanent endowment funds except in securities legal as

solicitation or conducting the business of promoter. Any ground that would have led to denial of the license is also ground for its revocation.

Solicitations upon premises owned or occupied by the association upon whose behalf the solicitation is made, and the soliciting of funds solely from members of the soliciting association are not subject to the provisions concerning promoters and solicitors or to certain other regulatory provisions of the ordinance. "Solicitations made solely for evangelical missionary or religious purposes" are also exempted. If, however, they are conducted in such a manner as in the opinion of the board may give the persons solicited or the public the impression that the purpose of the solicitation is in whole or in part charitable, the board may investigate the matter and give such publicity to its findings as it may deem best to advise the public of the facts. (Sec. 44.16.)

Plaintiff contends that since the practice of charity and the solicitation of funds for that purpose are part of its religious duties, the ordinances regulating the solicitation of charitable contributions cannot apply to plaintiff's solicitations without abridging its religious liberty in violation of the Constitution of the United States and the Constitution of California.

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investments for savings banks within the State of California, and has not paid out more than 15% of any amounts collected by solicitation within the City of Los Angeles for expenses of solicitation, and has not diverted funds donated to it from any source to purposes other than those for which they were donated.

"Provided, however, that the provisions of this paragraph shall not apply to any loan or investment that has been made prior to the passage of this ordinance.

"(e) That the work for which such corporation or association has been organized has been faithfully performed.

"(f) That the by-laws and other written rules and regulations of such corporation or association define the powers and duties of the officers of such corporation or association, and that a copy of the Articles of Incorporation of said charity, if it be a corporation, and a copy of the By-Laws and other written rules and regulations of such corporation or association have been filed with the Social Service Commission.

"(g) That within three months prior to its endorsement such a corporation or association has not violated any law or ordinance applicable to it.

Religious liberty "embraces two concepts,—freedom to believe and freedom to act. The first is absolute but, in the nature of things, the second cannot be." (Cantwell *v.* State of Connecticut, 310 U. S. 296, 303 (60 S. Ct. 900, 84 L. Ed. 1213, 128 A. L. R. 1352.) The constitutional guarantee protects the profession of a religious belief by word of mouth or in writing, the dissemination of the doctrines of a religious organization by preaching from the pulpits or other methods of evangelism, or the right to refuse to state beliefs against the dictates of one's conscience. (Murdock *v.* Pennsylvania, 319 U. S. 105, 109 (63 S. Ct. 870, 891, 87 L. Ed. 1292, 146 A. L. R. 81); West Virginia *v.* Barnette, 319 U. S. 624, 642 (63 S. Ct. 1178, 87 L. Ed. 1628, 147 A. L. R. 674).) "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion, or force citizens to confess by word of mouth or act their faith therein." (West Virginia *v.* Barnette, 319 U. S. 624, 642 (63 S. Ct. 1178, 87 L. Ed. 1628, 147 A. L. R. 674).) It does not follow, however, that religious organizations enjoy unlimited freedom in carrying on all activities related to their religious program. As the United States Supreme Court declared in Murdock *v.* Pennsylvania, 319 U. S. 105, 109-110 (63 S. Ct. 870, 891, 87 L. Ed. 1292, 146 A. L. R. 81): "we do not intimate or suggest * * * that any conduct can be made a religious

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"(h) That the officers and employees of such corporation or association are persons of good moral character and reputation and that the corporation or association has exercised reasonable care in selecting persons of good moral character and reasonable experience as solicitors for its funds.

"Said Commission shall issue said endorsement to any such corporation or association as shall comply with the aforesaid requirements. Said endorsement shall be valid for such time as shall be fixed by the Commission but not exceeding one year from date of its issuance.

"Said Commission shall report to the Council upon request by it the name of any corporation or association which is endorsed or has been refused endorsement by it, with a general statement of the reasons for its refusal.

"Said Commission shall also have power to request any endorsed corporation or association to make application for a new endorsement at or after the end of each fiscal year or at an earlier period if the Commission shall deem such requirement advisable, and if said corporation or association shall not do so its endorsement shall be withdrawn."

rite and by the zeal of the practitioners swept into the First Amendment. Reynolds *v.* United States, 98 U. S. 145, 161-167, 25 L. Ed. 244, and Davis *v.* Beason, 133 U. S. 333, 10 S. Ct. 299, 33 L. Ed. 637, denied any such claim to the practice of polygamy and bigamy. Other claims may well arise which deserve the same fate. We only hold that spreading one's religious beliefs or preaching the Gospel through distribution of religious literature and through personal visitations is an age-old type of evangelism with as high a claim to constitutional protection as the more orthodox type."

Many activities prompted by religious motives can hardly be differentiated from secular activities. If the applicability of government regulation turned on the religious motivation of activities, plausible motivations would multiply and in the end vitiate any regulation. "Civil liberties, as guaranteed by the Constitution, imply the existence of an organized society maintaining public order without which liberty itself would be lost is the excesses of unrestrained abuses. • • • Where a restriction of the use of highways • • • is designed to promote the public convenience in the interest of all, it cannot be disregarded by the attempted exercise of some civil right which in other circumstances would be entitled to protection. One would not be justified in ignoring the familiar red traffic light because he thought it his religious duty to disobey the municipal command or sought by that means to direct public attention to an announcement of his opinion," (Cox *v.* New Hampshire, 312 U. S. 569, 574 (61 S. Ct. 762, 85 L. Ed. 1049, 133 A. L. R. 1396).) In Prince *v.* Massachusetts, 321 U. S. 158 (64 S. Ct. 438, 88 L. Ed. 645), it was contended that religious liberty was abridged by the application of a statute regulating child labor to a guardian who permitted her minor ward to distribute religious literature on the streets at night. In vindicating the state's power to regulate in this way the dissemination of religious beliefs, the court declared: "The parent's conflict with the state over the control of the child and his training is serious enough when only secular matters are concerned. It becomes the more so when an element of religious conviction enters. Against these sacred private interests, basic in a democ-

racy, stand the interests of society to protect the welfare of children, and the state's assertion of authority to that end, made here in a manner conceded valid if only secular things were involved. The last is no mere corporate concern of official authority. It is the interest of youth itself, and of the whole community, that children be both safeguarded from abuses and given opportunities for growing into free and independent well-developed men and citizens. Between contrary pulls of such weight, the safest and most objective recourse is to the lines already marked out, not precisely but for guides, in narrowing the no man's land where this battle has gone on . . . the family itself is not beyond regulation in the public interest, as against a claim of religious liberty. Reynolds *v.* United States, 98 U. S. 145, 25 L. Ed. 244; Davis *v.* Beason, 133 U. S. 333, 10 S. Ct. 299, 33 L. Ed. 637. And neither rights of religion nor rights of parenthood are beyond limitation. Acting to guard the general interests in youth's well being, the state as parens patriae may restrict the parent's control by requiring school attendance, regulating or prohibiting the child's labor and in many other ways. Its authority is not nullified merely because the parent grounds his claim to control the child's course of conduct on religion or conscience. . . . It is sufficient to show what indeed appellant hardly disputes, that the state has a wide range of power for limiting parental freedom and authority in things affecting the child's welfare; and that this includes, to some extent, matters of conscience and religious conviction."

Activities characteristic of the secular life of the community may properly be a concern of the community even though they are carried on by a religious organization. (See, Prince *v.* Massachusetts, 321 U. S. 158, 165 (64 S. Ct. 438, 88 L. Ed. 645); United States *v.* Ballard, 322 U. S. 78, 87 (64 S. Ct. 882, 88 L. Ed. 1148); Murdock *v.* Pennsylvania, 319 U. S. 105, 109 (63 S. Ct. 870, 891, 87 L. Ed. 1292, 146 A. L. R. 81); Chaplinsky *v.* New Hampshire, 315 U. S. 568, 571 (62 S. Ct. 766, 86 L. Ed. 1031); Cox *v.* New Hampshire, 312 U. S. 569, 574 (61 S. Ct. 762, 85 L. Ed. 1049, 133 A. L. R. 1396); Davis *v.* Beason, 133 U. S. 333, 342 (10 S. Ct. 299, 33 L. Ed. 637); In re Dart, 172 Cal. 47, 56 (155 P. 63, Ann. Cas. 1917D 1127, L. R. A. 1916D 905); Chrisman

v. Culinary Workers' etc., 46 Cal. App. 2d 129, 132 (115 P. 2d 553); People *v.* Pierson, 176 N. Y. 201 (68 N. E. 243, 98 Am. St. Rep. 666, 63 L. R. A. 187); City of St. Louis *v.* Hellscher, 295 Mo. 293 (242 S. W. 652); Commonwealth *v.* Childs, 299 Mass. 367 (12 N. E. 2d 814); Commonwealth *v.* Green, 268 Mass. 585 (168 N. E. 101); Commonwealth *v.* Plaisted, 148 Mass. 375 (19 N. E. 224, 12 Am. St. Rep. 566, 2 L. R. A. 142); State *v.* White, 64 N. H. 48 (5 A. 828); Stull *v.* Reber, 215 Pa. 156 (64 A. 419, 7 Ann. Cas. 415); Matter of Frezee, 63 Mich. 396, 405 (30 N. W. 72, 6 Am. St. Rep. 310); State *v.* Chenoweth, 163 Ind. 94, 99 (71 N. E. 197); see, also, Zollman, Religious Liberty in the American Law, 17 Mich. L. Rev. 355, 456). Religious organizations engage in various activities such as founding colonies, operating libraries, schools, wineries, hospitals, farms, industrial and other commercial enterprises. Conceivably they may engage in virtually any worldly activity, but it does not follow that they may do so as specially privileged groups, free of the regulations that others must observe. If they were given such freedom, the direct consequence of their activities would be a diminution of the state's power to protect the public health and safety and the general welfare. With that power so easily diminished there would soon cease to be that separation of church and state underlying the constitutional concept of religious liberty. (See Evans *v.* Selma Union High School Dist., 193 Cal. 54 (222 P. 801, 31 A. L. R. 1121); Knowlton *v.* Baumhover, 182 Iowa 691 (166 N. W. 202, 5 A. L. R. 841); People ex rel. Ring *v.* Board of Education, 245 Ill. 334 (92 N. E. 251, 19 Ann. Cas. 220, 29 L. R. A. N. S. 442); Board of Education of Cincinnati, *v.* Minor, 23 Ohio St. 211 (13 Am. Rep. 233); Donahoe *v.* Richards, 38 Me. 379 (61 Am. Dec. 256).)

There is no doubt that plaintiff, like many religious organizations, regards the practice of charity as a religious duty. It is not exclusively a religious activity, however; many charitable activities spring from sources of the everyday life of the community unrelated to religion. The state itself has an active responsibility for the welfare of the poor, the aged, the sick, the unemployed, and the orphaned. There is a public interest in regulating the solicitation of

funds for these purposes. The very worthiness of such purposes creates a risk that the charitable impulses of people may be taken advantage of by solicitors who would collect funds under false pretenses or retain for themselves an undue percentage of what they collected. Fraud in the solicitation of charitable contributions can be most effectively controlled by measures such as the regulation in question requiring the presentation of information to enable the public to determine the nature and worthiness of the purpose for which the solicitation is made, and requiring proof of the good character and reputation of paid solicitors. In the words of Mr. Justice Shaw, speaking for a majority of the court in In re Dart, 172 Cal. 47, 56 (155 P. 63, Ann. Cas. 1917D 1127, L. R. A. 1916D 905): "The occupation of soliciting contributions to charitable purposes is clearly so far subject to the police power, that it may be regulated by laws or ordinances providing for a reasonable supervision over the persons engaged therein, and for the application and use of the contributions received to the purposes intended, in order to prevent unscrupulous persons from obtaining money, or other things, under the pretense that they were to be applied to charity, and to prevent the wrongful diversion of such funds to other uses, or to secure them against waste. Measures reasonably tending to secure these ends are unquestionably valid." (See cases collected in 57 A. L. R. 516, 128 A. L. R. 1361.)

The religious organization in Cantwell *v.* Connecticut, supra, on which plaintiff relies, solicited funds, not for charitable purposes but for its own support. Under the statute there involved it was allowed to engage in such solicitation only if the licensing officer determined that its cause was a religious one and issued a certificate to that effect. It was held that the vesting of this power in an administrative official amounted to "censorship of religion as the means of determining its right to survive" since under the statute the official's judgment was decisive as to what constituted a religious cause. The ordinance involved in the present case specifically exempts solicitations for religious purposes only; its object is to regulate all solicitations for charitable purposes. The Board of Social Service Commissioners has no authority to appraise the nature or

worthiness of a religious cause. In the Cantwell case the court recognized that even the solicitation of funds for the support of a religious organization is subject to reasonable regulation: "The general regulation, in the public interest, of solicitation, which does not involve any religious test and does not unreasonably obstruct or delay the collection of funds, is not open to any constitutional objection, even though the collection be for a religious purpose. Such regulation would not constitute a prohibited previous restraint on the free exercise of religion or interpose an inadmissible obstacle to its exercise." (310 U. S. 296, 305.) Thomas *v.* Collins, — U. S. — (65 S. Ct. 315, Adv. Opn., 89 L. Ed. 340, 89 L. Ed. —), cited in support of plaintiff's contentions, "does not involve the solicitation of funds or property." (65 S. Ct. 315, 324.) The court there held that a state could not constitutionally require a paid union organizer to register with the Secretary of State before making a public speech inviting a nonunion worker specifically and nonunion workers in the audience generally to join the union. "We think a requirement that one must register before he undertakes to make a public speech to enlist support for a lawful movement is quite incompatible with the requirements of the First Amendment." (65 S. Ct. 315, 327). The court was careful, however, to distinguish cases in which the speaker solicits funds from the public: "Once the speaker goes further, however, and engages in conduct which amounts to more than the right of free discussion comprehends, as when he undertakes the collection of funds or securing subscriptions, he enters a realm where a reasonable registration or identification requirement may be imposed. In that context such solicitation would be quite different from the solicitation involved here. It would be free speech plus conduct akin to the activities which were present, and which it was said the State might regulate, in Schneider *v.* Irvington, supra, 308 U. S. 147, 84 L. Ed. 155, 60 S. Ct. 146, and Cantwell *v.* Connecticut, 310 U. S. 296, 84 L. Ed. 1213, 60 S. Ct. 900, 128 A. L. R. 1352, both supra. That however must be done and the restriction applied, in such manner as not to intrude upon the rights of free speech and free assembly. In this case the separation was not maintained." In his concurring opinion in Thomas *v.* Collins

Mr. Justice Jackson gives the following reasons for these variations in state power: "This wider range of power over pursuit of a calling than over speech-making is due to the different effects which the two have on interests which the state is empowered to protect. The modern state owes and attempts to perform a duty to protect the public from those who seek for one purpose or another to obtain its money. When one does so through the practice of a calling, the state may have an interest in shielding the public against the untrustworthy, the incompetent, or the irresponsible, or against unauthorized representation of agency. A usual method of performing this function is through a licensing system.

"But it cannot be the duty, because it is not the right, of the state to protect the public against false doctrine. The very purpose of the First Amendment is to foreclose public authority from assuming a guardianship of the public mind through regulating the press, speech, and religion. In this field every person must be his own watchman for truth, because the forefathers did not trust any government to separate the true from the false for us. West Virginia State Board of Education *v.* Barnette, 319 U. S. 624, 63 S. Ct. 1178, 87 L. Ed. 1628, 147 A. L. R. 674. Nor would I. Very many are the interests which the state may protect against the practice of an occupation, very few are those it may assume to protect against the practice of propagandizing by speech or press. These are thereby left great range of freedom."

(5a) The requirement that promoters and the solicitors working under them submit proof of their good character and reputation does not discriminate against plaintiff or other religious organizations or censor their religious beliefs, nor does the regulation vest arbitrary power in the administrative board in authorizing it to withhold a license it if is not satisfied that the applicant is of good character and reputation. Such a requirement is common in statutes regulating admission to professions and occupations involving duties of a fiduciary character. (In re Stepsay, 15 Cal. 2d 71 (90 P. 2d 489); Spears *v.* State Bar, 211 Cal. 183 (294 P. 697, 72 A. L. R. 923); Leach *v.* Daughtery,

73 Cal. App. 83 (238 P. 160); Riley *v.* Chambers, 181 Cal. 589, 593 (185 P. 855, 8 A. L. R. 418); Ex parte McManus, 151 Cal. 331 (90 P. 702); Ex parte Whitley, 144 Cal. 167 (77 P. 879, 1 Ann. Cas. 13); Grundling *v.* Chicago, 177 U. S. 183, 187 (20 S. Ct. 633, 44 L. Ed. 725); Graves *v.* Minnesota, 272 U. S. 425 (47 S. Ct. 122, 71 L. Ed. 331); New York ex rel. Liberman *v.* Van De Carr, 199 U. S. 552 (26 S. Ct. 144, 50 O. Ed. 305); Douglas *v.* Noble, 261 U. S. 165 (43 S. Ct. 303, 67 L. Ed. 590); see also, 12 A. L. R. 1435, 1450; 54 A. L. R. 1104, 1112; 92 A. L. R. 400, 415; Rottschaefer, Constitutional Law, pp. 466, 482.) The filing of a bond is also a common requirement in the regulation of occupations or activities involving the handling of entrusted funds. (Palmer *v.* Continental Casualty Co., 205 Cal. 34, 35 (269 P. 638); Clark *v.* Patterson, 213 Cal. 4 (300 P. 967, 75 A. L. R. 1124;) Grundling *v.* Chicago, supra; People of the State of New York *v.* Perretta, 253 N. Y. 305 (171 N. E. 72, 84 A. L. R. 636); see 33 Am. Jur., Licenses, sec. 54; 87 A. L. R. 145; 95 A. L. R. 1224; 103 A. L. R. 405; 120 A. L. R. 950.) The license fee is a reasonable one, covering the expenses of investigations and administration.

The board has no discretion to withhold a license if the applicant's good character and reputation and his financial responsibility are established and the required bond is filed. The board is not free to deny licenses, but must act reasonably in the light of the evidence presented. (Riley *v.* Chambers, 181 Cal. 589, 595 (185 P. 855, 8 A. L. R. 418); In re Holmes, 187 Cal. 640, 647 (203 P. 398); Tarpey *v.* McClure, 190 Cal. 593, 600 (213 P. 983); Bank of Italy *v.* Johnson, 200 Cal. 1, 32 (251 P. 784); People *v.* Globe Grain and Mill Co., 211 Cal. 121, 125 (294 P. 3); Cranford *v.* Jordan, 7 Cal. 2d 465, 467 (61 P. 2d 45); Leach *v.* Daugherty, 73 Cal. App. 83 (238 P. 160); Hall *v.* Geiger-Jones Co., 242 U. S. 539, 554 (37 S. Ct. 217, 61 L. Ed. 480); Graves *v.* Minnesota, supra, p. 428; Douglas *v.* Noble, supra, p. 170; New York ex rel. Lieberman *v.* Van De Carr, supra; Plymouth Coal Co. *v.* Commonwealth of Pennsylvania, 232 U. S. 531, 545 (34 S. Ct. 359, 58 L. Ed. 713); Minnesota *v.* Probate Court, 309 U. S. 270, 277 (60 S. Ct. 523, 84 L. Ed. 744, 126 A. L. R. 530); Yakus *v.* United States, 321 U. S. 414, 434, 435 (64 S. Ct. 660, 88 L. Ed. 834.))

The provision empowering the board to revoke a license in case of unfair, unjust, inequitable or fraudulent practices of solicitation is neither vague nor uncertain and affords no possibility for the censorship of religious beliefs. In Agnew *v.* Daugherty, 189 Cal. 446, 448-449 (209 P. 34), this court upheld a similar provision in the Corporate Securities Act making the granting of a permit dependent on the commissioner's finding that the "proposed plan of business . . . is not unfair, unjust or inequitable" and that the methods to be used to dispose of securities "are not such as, in his opinion, will work a fraud upon the purchaser thereof." (See, also, People *v.* Kuder, 93 Cal. App. 42 (269 P. 198, 630); People *v.* Stewart, 115 Cal. App. 681, 689 (2 P. 2d 195); Yakus *v.* United States, supra, pp. 426-427 and cases there cited.)

It is contended that since the trial court found that plaintiff is engaged exclsively in religious activities, the Charities and Relief Ordinance is rendered inapplicable to plantiff's solicitations because of its provision that it "shall not be applicable to solicitations made solely for evangelical, missionary or religious purposes." There is no conflict in the evidence, however, as to what plaintiff's activities are. The issue presented is one of law, namely, whether the charitable purposes for which plaintiff solicits funds are exclusively religious purposes within the meaning of the ordinance. The trial court erroneously concluded that because plaintiff solicits funds for charitable purposes as part of its religious program its solicitations are solely for religious purposes within the meaning of the ordinance. The ordinance specifically differentiates charitable from religious purposes. No person may solicit "any contribution for any charitable purpose" without complying with the requirements of the ordinance. The ordinance does not exempt solicitations for charitable purposes undertaken by religious organizations. Solicitations for charitable purposes, namely, for "philanthropic, social service, benevolent, patriotic" purposes, are subject to regulation whether or not they are undertaken by a religious organization. The intention to maintain a sharp differentiation between charitable and religious purposes is apparent in the provision that if a solicitation for religious purposes is likely to give

the public the impression that funds are sought for charity, the board shall "investigate the matter of such solicitation and give publicity to its findings thereon in such manner as it may deem best to advise the public of the facts of the case." The solicitation of funds to provide food, shelter, and clothing for those in distress is clearly for a charitable purpose and is therefore regulated by the ordinance. Plaintiff admittedly solicits funds for the purpose of giving relief to persons in distress. Since this purpose is charitable within the meaning of the ordinance, plaintiff's solicitations for that purpose are subject to the ordinance.

The judgment is reversed.

Gibson, C. J., Shenk, J., and Spence, J., concurred.

CARTER, J.—I dissent. The majority opinion places the stamp of validity in toto upon a regulatory ordinance containing requirements so stringent that with their enforcement humble charities and good works must inevitably bow to

"The organized charity scrimped and iced
"In the name of a cautious statistical Christ."

Admittedly the intrusion into community existence of religious activities characteristic of the secular life brings into sharp focus the conflicting loyalties to church and state, the clash of religious freedom with social legislation. (See Conscience *v.* The State, by Prof. C. C. McCown, 32 Cal. L. Rev. 1; Liberty under the Fourteenth Amendment by John Raeburn Green, 43 Mich. L. Rev. 437; Bill of Rights Review of Am. Bar Ass'n., vol. 1, no. 2.)

Since 1940 the subject has been brought frequently before the United States Supreme Court by the sect known as Jehovah's Witnesses, and that court has been alert to protect the free exercise of religion against abridgement. Its recent decisions, rendered at a time when the currents of world thought have been against democracy and toleration, have, as Professor McCown comments, made a substantial contribution to the defense of the liberties guaranteed by the Constitution, and the emphasis in several of the opinions upon the rights of "little people," of causes that

are humble, needy, and without financial resources, is particularly notable. Quoting from the cited article, "The justices of the Supreme Court echo the language of social and religious protest from almost the beginning of history (2500 B. C.) in Mesopotamia, Egypt, and later in Palestine, down to the present day. Such language is familiar in the Hebrew prophets, the Psalms, and the Gospels. The obligation of government to protect the rights of the weak against those who possess political and economic power has been repeatedly proclaimed by prophets, but all too seldom recognized by the powers that be. Both democracy and religion demand the protection of the advocate of unpopular causes, for practically every reform, whether political, social, or religious, begins as a protest against vested interests and majority opinions. . . . In dealing with Jehovah's Witnesses the Supreme Court has shown a sanity and a consideration for the ultimate issues involved which cannot but have some effect upon the cowardice of politicians and the impatience of crowds." (32 Cal. L. Rev. pp. 14, 30.) (see also Cantwell *v.* Connecticut, 310 U. S. 296 (60 S. Ct. 900, 84 L. Ed. 1213, 128 A. L. R. 1352); Largent *v.* Texas, 318 U. S. 418 (63 S. Ct. 667, 87 L. Ed. 873); Jamison *v.* Texas, 318 U. S. 413 (63 S. Ct. 669, 87 L. Ed. 869); Murdock *v.* Pennsylvania, 319 U. S. 105 (63 S. Ct. 870, 891, 87 L. Ed. 1292, 146 A. L. R. 81); Martin *v.* Struthers, 319 U. S. 141 (63 S. Ct. 862, 882, 87 L. Ed. 1313); West Virginia *v.* Barnett, 319 U. S. 624 (63 S. Ct. 1178, 87 L. Ed. 1628, 147 A. L. R. 674).) In these decisions state legislation impinging upon a claimed religious freedom has been held valid only where there has been a strong showing of an essential need for regulation in the interest of the public safety, health, and welfare, or for the maintenance of morals, peace, and order, protection against a clear and present danger, or the like.

During the world war, as also pointed out by Professor McGown, the rise of nationalism to the status of a religious cult and the contemporary sharpening of the Christian conscience revitalized and realigned issues that were supposedly settled. Social problems have arisen which are ancient, but also very modern, and they are made the more

difficult of solution by the traditions and social, political, religious, and legal philosophies with which they are surrounded. This country, having just emerged from a great conflict in which a guarantee of religious liberty to all peoples was a major aim, should be on guard against the subtle undermining, in the guise of municipal regulation, of those very rights which it has gone to such lengths to secure for others. For this reason the majority holding in the present case, with its reactionary trend, is particularly deplorable.

Obviously the commission of crime in the name of religion cannot be tolerated and the state must be safeguarded. The public are entitled to reasonable protection in community life, and fanaticism or misguided earnestness cannot be allowed to hold rein over the goodwill of the people. But beyond situations of emergency and present danger, the field of regulation should be extremely narrow. Thus in Schneider *v.* Irvington, 308 U. S. 147, 161 (60 s. Ct. 146, 84 L. Ed. 155), the United States Supreme Court, after stressing the importance of preventing the restriction of enjoyment of the constitutional liberties, said: "In every case, therefore, where legislaive abridgement of the rights is asserted, the courts should be astute to examine the effect of the challenged legislation. Mere legislative preferences or beliefs respecting matters of public convenience may well support regulation directed at other personal activities, but be insufficient to justify such as diminishes the exercise of rights so vital to the maintenance of democratic institutions. And so, as cases arise, the delicate and difficult task falls upon the courts to weigh the circumstances and to appraise the substantiality of the reason advanced in support of the regulation of the free enjoyment of the rights."

Using this formula to test the legislation here under review, it appears that one of the main reasons advanced in support of the regulation is its asserted necessity to protect the public from fraud. Resort to the penal statutes and usual methods of dealing with this evil is said to afford insufficient protection, in that warm hearted and generous citizens are especially vulnerable to solicitations made in the name of a religion or charity because of the nature of the appeal and their reluctance to turn a deaf ear to any

cry of the poor and needy. Thus a delicate social problem is posed. Which is the more important, to give the public added protection, over that of the penal statutes, against annoyance, inconvenience, and possible fraud, or to preserve intact the cherished right of religious liberty? Should the state essay, at the expense of invasion of a constitutional right, to proect a citizen from his own inclination, or perchance his weakness, in responding to charitable solicitation without due inquiry into the worth of the sponsored cause? Is it not more in keeping with the American tradition to instill in youth and preserve in the thought of the people that individual independence, strength of character, moral stamina, and perception which will enable them to judge personally the good or bad fajth of a colporteur or solicitor and the merit of the cause he espouses?

That some fraud may escape detection is to be anticipated. This is more or less true in all walks of life despite volumes of protective legislation. But the diversion to wrongful channels of some part of the public contribution to charity is not a major catastrophe when weighed against the cost of protection effected only by carving a large slice from the bill of rights. Indeed it may be asked whether any community can afford to undertake a regulatory program which may largely deprive the public of the opporunity to hear and respond to pleas of other than organized and municipally approved charities, thus stifling the growth and character development gained by the exercise of pity, compassion, and generosity. Small are the sums contributed by the average community to charity when compared with the large amounts customarily spent for luxuries and entertainment. In one sense the benefit of the opportunity to give where the right hand knows not what the left hand is doing is of more intrinsic value than the actual raising of the money, for all are in need of the spiritual enrichment which comes of free will offering. There are few housewives who will not cheerfully give from their larder to ten itinerant mendicants rather than run the risk of turning away hungry one man worthy of alms. And by the same reasoning there is less danger from solicitation for unworthy causes than from regulations so stringent that they may crush the humble workers, the "little people,"

destroy their good deeds, impinge upon their practice of religion, and form a breeding ground for intolerance, totalitarianism, or narrow nationalism.

All of this has been given recognition in the decisions of the United States Supreme Court. In the Cantwell case it is said at pages 308 and 310, "But the people of this nation have ordained in the light of history, that, in spite of the probability of excesses and abuses, these liberties are, in the long view, essential to enlightened opinion and right conduct on the part of the citizens of a democracy. The essential characteristic of these liberties is, that under their shield many types of life, character, opinion, and belief can develop unmolested and unobstructed. Nowhere is this shield more necesary than in our own country for a people composed of many races and of many creeds. There are limits to the exercise of their liberties. The danger in these times from the coercive activities of those who in the delusion of [redacted]ial or religious conceit would incite violence and breach[redacted] the peace in order to deprive others of their equal right to the exercise of their liberties, is emphasized by events familiar to all. These and other transgressions of those limits the states appropriately may punish. • • • *Equally obvious is it that a state may not unduly suppress free communication of views, religious or other, under the guise of conserving desirable conditions.* Here we have a situation analogous to a conviction under a statute sweeping in a great variety of conduct under a general and indefinite characterization, and leaving to the executive and judicial branches too wide a discretion in its application."

Again it is said in the Schneider case at page 164: "Conceding that fraudulent appeals may be made in the name of charity and religion, we hold a municipality cannot, for this reason, require all who wish to disseminate ideas to present them first to police authorities for their consideration and approval, with a discretion in the police to say some ideas may, while others may not, be carried to the homes of citizens; some persons may, while others may not disseminate information from house to house. Frauds may be denounced as offenses and punished by law. Trespasses may similarly be forbidden. If it is said that these means are less efficient and convenient than bestowal of power on

police authorities to decide what information may be disseminated from house to house, and who may impart the information, the answer is that considerations of this sort do not empower a municipality to abridge freedom of speech and press." The same is true with respect to abridgement of the right of religious freedom. Many recent pronouncements of similar tenor might be added to those above cited.

Before proceeding to a more detailed review of the legislation here involved, it may be stated that plaintiff is an incorporated religious organization and that it operates a mission and store, the latter being called its industrial department. Among its religious activities are the holding of religious services at its mission by a minister ordained by it, church services and missionary work, giving away the New Testament and religious tracts. It conducts its operations in substantially the following manner: Financial solicitors, working from its headquarters, endeavor to obtain money contributions. These contributions are delivered to the treasurer of the organization and are used for carying on its religious activities. The present treasurer has been a solicitor for plaintiff for many years and retains 30 per cent of the funds collected. About 50 per cent of the funds are used for salaries and expenses. The minister's sole compensation is derived from contributions and it is said to cover no more than his expenses. Plaintiff also gives assistance in property and money to those in need. In operating its store or industrial department it acquires secondhand property, most of which is called salvage, and sold to the public. The remainder is disposed of as junk. The truck drivers who collect the property receive a percentage of the salvage, but they do not participate in the proceeds derived from operation of the store. They also retain all but 10 per cent of the proceeds of the sale of the junk. Solicitors of salvage work from trucks and receive an average of 50 cents an hour. The store uses its funds for expenses of operation and occasionally does charity work. The balance is delivered to plaintiff's treasurer. None of the salvage solicitors distribute plaintiff's religious literature.

Defendant department claims that plaintiff, in operating its store, is a "promoter" as defined in the city ordin-

ance, and demands that it obtain a license authorizing solicitations for the store. No demand is made in regard to religious activities, but a religious organization is required to file a notice of intention and obtain a permit to solicit funds for charitable purposes. Apparently defendant department determines whether an organization is soliciting for charity or for religion and has adopted a rule that 50 per cent of the amount collected must go for charitable purposes.

The trial court found on substantial evidence that plaintiff is a "duly constituted and functioning religious organization, engaged exclusively in the promulgation, by literature and word of mouth, of its religious beliefs, by and through its auxiliaries, and in the procuring of donations in the form of money and articles of value in the prosecution and furtherance of its religious activities," and that if plaintiff is required to obtain a permit and pay a license fee as a condition of solicitation and receipt of donations "to be used in the furtherance of said religious activities," this "will amount to a prior restraint on the exercise of (its) religious activities within the meaning of the Constitution of the United States * * * an infringement upon the free exercise of * * * religious liberty as protected by the Constitution."

These findings require a consideration first of the question whether plaintiff's operations come in whole or in part within the exemption provision of the ordinance. Solicitations upon premises owned or occupied by the association in whose behalf the solicitation is made, and the soliciting of funds from members of the association are not subject to the promoter, solicitor, and certain other regulatory provisions of the ordinance. Exemption is also extended to "solicitations made *solely* for evangelical, missionary or religious purposes," but with the proviso that if such solicitations are conducted in a manner which, in the opinion of the board, may give those solicited the impression that the purpose of the solicitation is in whole or in part charitable, the board may investigate the matter and give such publicity to its findings as it deems best to advise the public of the facts.

In considering the applicability of the exemption to plaintiff's activities it would at first blush appear, and the trial court concluded, that inasmuch as all of plaintiff's operations, including its charitable work, are conducted for and as part and parcel of and incident to its religious purpose, all must come within the exemption. However, a review of the ordinance in its entirety indicates that by use of the word "solely" in the exemption clause, it was intended to differentiate between solicitations for promulgation and support of the religion or church itself, and solicitations for charitable work performed as part of the religious purpose, with exemption accorded to the former but not to the latter. If the exemption is thus unavailable where the religious organization solicits for charity in connection with the promulgation and exercise of its doctrines of religion (and this seems to be the interpretation placed upon the ordinance by the rules and regulations of the board and by the officers in enforcing it), then the validity of the regulatory provisions must be tested by the limitations, if any, which may be imposed upon the exercise of the right of religious liberty.

To a degree the majority opinion recognizes this fact but it implies, without straightway so declaring, that charitable undertakings are separable from the religious purpose inducing them, and that by severance they may be removed to the realm of secular affairs and there be subjected to governmental regulation without intrusion of the bothersome problem of preservation of the constitutional right of religious liberty. This implication is inherent in the discussion which starts with the declaration (p. 12): "Many activities prompted by religious motives can hardly be differentiated from secular activities. If the applicability of government regulation turned on the religious motivation of activities, plausible motivations would multiply and in the end vitiate any regulation," and proceeds to state (pp. 14-15): "Activities characteristic of the secular life of the community may properly be a concern of the community even though they are carried on by a religious organization • • • Religious organizations engage in various activities such as founding colonies, operat-

ing libraries, schools, wineries, hospitals, farms, industrial and other commercial enterprises. Conceivably they may engage in virtually any worldly activity, but it does not follow that they may do so as specially privileged groups, free of the regulations that others must observe * * * There is no doubt that plaintiff, like many religious organizations, regards the practice of charity as a religious duty. It is not exclusively a religious activity, however; many charitable activities spring from sources in the everyday life of the community unrelated to religion. The state itself has an active responsibility for the welfare of the poor, the aged, the sick, the unemployed, and the orphaned. There is a public interest in regulating the solicitation of funds for these purposes * * *"

In the above discussion the majority opinion quotes copiously from Prince *v.* Massachusetts, 321 U. S. 158 (64 S. Ct. 438, 88 L. Ed. 645), a case which has been criticized as being out of line with other recent United States Supreme Court decisions. (See Liberty Under the Fourteenth Amendment, *supra*, at p. 446.)

It is true that religious liberty "embraces two concepts—freedom to believe and freedom to act. The first is absolute but, in the nature of things, the second cannot be" (Cantwell *v.* Connecticut, *supra*, 310 U. S. 296, 303), and that where the religious organization conducts activities characteristic of the secular life of the community, they may be subject to proper regulation under the police power. But, as already pointed out, this power of regulation is not unrestricted and it can only be enforced with due regard to preservation of constitutional rights. Both freedom of religious thought and freedom of religious action come within the protection of the bill of rights. This freedom cannot be whittled away by carving out segments of religious activities and relegating them to the realm of secular affairs. If that were permitted, the right of action for a religious purpose could eventually be destroyed by the gradual severance and classification as secular of every activity undertaken to promote the religious purpose.

Aside from the pronouncements found in the late federal decisions, it has long been the law of this state that a charity conducted as part of a religious practice is inseparable

from the religion itself. The utter impossibility of any severance is made plain in the case of Application of Dart (1916), 172 Cal. 47 (155 P. 63, Ann. Cas. 1917D 1127, L. R. A. 1916D 905), where in speaking of the Jewish and Christian religions it is said (pp. 55-56): "In both of these religions charity is the central word. It is enjoined, not as a good thing, or a wise thing, or as a kindly thing only, *but as a fundamental part of the religion itself.* Says the Jewish faith: 'On three things the world is stayed; on the Thorah (the law) and on worship and on the bestowal of kindness.' 'Now the end of the commandment is charity out of a pure heart,' says Paul to Timothy. 'Charity is the scope of all God's commands,' preaches Chrysostom. 'All perfection of the Christian life is to be attained according to charity,' declares Thomas Aquinas. Does it need more, does it need so much, to show that in these religions *the bestowal of charity, the devotion of life to charity, are a part of the religion itself?* And does it demand discussion to establish so plain a truth as that touching religion there is a doubtful zone which legislation should be most reluctant to enter? The founders of the nation recognized it when they placed the great guaranty of religious liberty in the constitution of a free people, and it is for every court to see that liberty is not encroached upon and that freedom gnawed and impaired by any experimental legislation however well meant. So when legislation does enter that uncertain domain, the fact that it is there must bring it to condemnation. In accordance with the dictate of the Constitution itself the doubt will be resolved in favor of religious liberty. And it will be found better in the long run that the free exercise of religion be preserved in its integrity, better for the nation, better for charity itself which owes so much to religion, even if the efficiency of religious charities be not up to the standard of perfection set by the Municipal Charities Commission. If, under that standard, seventy-five cents of every dollar would go to the objects of charity, while under the less efficient methods in vogue but fifty cents of each dollar actually reaches the beneficiaries, it is not to be forgotten that there will be many millions fewer of these dollars to be distributed in charity if the activities of the religious are hampered, thwarted, and stayed."

The above comment is extremely apropos. If, under defendants' interpretation and enforcement of the ordinance, plaintiff is to be denied the benefit of the exemption clause insofar as its charitable activities are concerned, then the regulatory provisions of the ordinance must be subjected to close scrutiny in order to determine whether they infringe the guarantee of religious liberty. Although concededly acts of charity apart from religious motivation, might be performed by the state, or by a professed atheist or non-religionist, nevertheless the evidence here establishes beyond contradiction that plaintiff's charities are an integral part of and inseparable from its religious purpose. From common knowledge and in challenge to the severance theory of the majority opinion, it must be said that acts of charity which do not stem, consciously or unconsciously, from early religious training or Christian inheritance are sparse. It is a matter of common historical knowledge that public charities and benevolent associations for the gratuitous relief of every species of distress, are peculiar to Christianity; no other system of civil or religious policy has originated them; they form its highest praise and characteristic feature. The Apostle Paul in chapter XIII of his first Epistle to the Corinthians epitomized his concept of the essential intangibles of Christianity and concluded with the immortal verse: "And now abideth faith, hope, charity, these three; *but the greatest of these is charity.*" Thus charity is the heart and basic principle of plaintiff's religion. To destroy that heart leaves the body lifeless. Yet the majority opinion does just that. It declares charity to be a secular affair in spite of the above showing to the contrary and thus subjects the exercise by plaintiff of its religion to unrestricted regulation and ultimate destruction.

Moreover, the anomalous result of the majority opinion is that a religious organization may use its own funds for a charitable purpose without hindrance, but if it solicits directly for the charity, the solicitation is subject to the cumbersome ordinance provisions hereinafter discussed. This makes the matter merely one of the form of the solicitation. To avoid regulation and gain the protection of the exemption, the solicitor only needs to make his plea for funds in the name of his church. The church then receives

the donations and uses them for any purpose it may choose, good or bad, charitable or uncharitable, and it is not reached by the ordinance provisions.

Proceeding now to test the regulatory provisions of the ordinance as against the claimed infringement of the constitutional guarantee of religious liberty, it will be noted that the majority opinion incorporates the provisions by marginal reference and then, upon a discussion replete with generalizations, none of which standing alone can be said to contain an incorrect statement of the law, it announces the broad conclusion that, "We find nothing unduly burdensome or unreasonable in any of these provisions" (p. 15); "In our opinion the classification effected by this ordinance is reasonable and the standards provided are adequate" (pp. 7-8).

Were each regulation discussed in detail and given separate consideration, it is doubtful that even the author of the opinion would say that none is unduly onerous. Section 44.05 imposes upon any person who wishes to solicit "any contribution for any charitable purpose," a duty of filing with the department at least ten days prior to the commencement of the work, a written notice of intention containing "complete information" upon eleven comprehensive phases of the undertaking. But a glance at this section shows that the much maligned income tax forms issued by the federal government are no more complex and demanding than is this notice of intention in its requirements of itemized data. One wonders where the average almsman or solicitor is to acquire the educational background to enable him to supply such statistics. Must the opportunity for exercising one's religion by doing charitable work be limited to those who are apt in reading, writing and arithmetic?

The solicitor must show (a) "The purpose of the solicitation and use of the contribution to be solicited"; he must make (b) "A specific statement, supported by reasons and, if available, figures, showing the need for the contribution proposed to be solicited"; he must show (c) "The character of such solicitation and how it will be made or conducted." How can these requirements be fitted into the program of the itinerant religionist who solicits as he wanders, taking

with the one hand to give freely with the other, reserving for himself only bare necessities? What freedom is left for the missionary and walking preacher who play so colorful a part on the American scene, soliciting their charities, spreading their doctrines, without preconceived plan and as each feels himself daily to be guided, and without compiling statistics or publishing abroad the good works.

Further requirements of the notice indicate that its enforcement will doubtless effect the disappearance of all but organized institutions, for the applicant must also show the following: "(d) The expenses of the solicitation, including salaries and other items, if any, regardless of from what funds such expenses are payable; (e) What portion of the contributions collected as a result of the solicitation will remain available for application to the specific purposes declared in the Notice of Intention as the object of the solicitation; (f) A specific statement of all contributions collected or received by such person or association within the calendar year immediately preceding the filing of such Notice of Intention. The expenditure or use made of such contributions, together with the names and addresses of all persons or associations receiving salaries, wages, compensation, commissions or emoluments from such contributions, and the respective amounts thereof; (g) The names and addresses of the officers and directors of any such association for which the solicitation is proposed to be made; (h) A copy of the resolution, if any, of any such association authorizing such solicitation, certified as a true and correct copy of the original of such resolution by the officer of such association having charge of the records thereof; (i) A statement that the signers of such Notice have read and are familiar with the provisions of this Article and will require all solicitors engaged in such solicitation to read and be familiar with all sections of this Article prior to making any such solicitation." This last quoted provision expressly bars all who have not attained a sufficient degree of learning to abide by its terms.

As a whole the involved demands are a far cry from the simple regulation endorsed in the Cantwell case, to wit: that "Without doubt a state may protect its citizens from fraudulent solicitation by requiring a stranger in the com-

munity, before permitting him publicly to solicit funds for any purpose, to establish his identity and his authority to act for the cause which he purports to represent. The state is likewise free to regulate the time and manner of solicitation generally, in the interest of public safety, peace, comfort or convenience" (310 U. S. at p. 306). A regulation such as that described is not unreasonable and affords a sufficient basis for the opening of an investigation in the event charges of fraud should be lodged against a solicitor (Murdock v. Pennsylvania, 319 U. S. 105 (63 S. Ct. 870, 891, 87 L. Ed. 1292, 146 A. L. R. 81)). Probably no sincere solicitor would protest having to register, carry an identification card, and conduct his activities in a seemly manner and at reasonable hours. But he should be immune from any more onerous legislative interference, even though to some, his efforts might appear to be misguided.

The ordinance contains further requirements even more burdensome than those above set forth. With the notice of intention there must be filed a statement of any agreement between solicitors and the organization for which they are soliciting (#44.06). Whenever in the opinion of the Board of Social Service Commissioners the notice of intention does not contain sufficient information for the public concerning the facts required to be therein stated, there must be filed within 48 hours such additional information as the board requests (#44.06). The department has power to investigate the statements in the notice of intention and the methods and manner of solicitation, to inspect records of the association for which the solicitation is made, and to issue to solicitors information cards at four cents a card. These information cards are in effect permits to solicit and they must set forth the facts stated in the notice of intention and such additional information as in the opinion of the board will be of assistance to the public in determining the nature and worthiness of the purpose for which the solicitation is made (#44.03). The board may recall information cards when they receive additional information which renders incorrect any statement thereon and amend them (#44.02). No person shall employ any misstatement, deception, or fraud in connection with the solicitation (#44.04), or use a fictitious name (#44.07).

A person may not solicit for a charitable association unless it maintains records of receipts and disbursements (#44.08. Solicitors must have the written authorization of the organizations they represent (##44.10, 44.11). They must exhibit their information card to the prospective donee when soliciting (#44.12), and file a complete report of their activities with the board (#44.14). They must give receipts to donees stating various facts (#44.15). Violation of the ordinance is made punishable as a crime.

In support of its declaration of the validity of these provisions, the majority opinion states that they confer upon the department no authority to withhold information cards when the requirements are met, and it cannot be assumed that the department will abuse its authority in order to withhold them. This is true, but is is also apparent that a procedure so complex and so costly in time and effort will, so far as many solicitors are concerned, be prohibitive. It is said in the Cantwell case (310 U. S. 296, 305) that "The general regulation, in the public interest, of solicitation, which does not involve any religious test and does not unreasonably obstruct or delay the collection of funds, is not open to any constitutional objection, even though the collection be for a religious purpose." Assuming that the provisions above quoted do not involve any religious test, nevertheless they are so demanding as not only to open the door to unreasonable delay and abuse of discretion, but also as possibly to bar certain classes of solicitors found among the "little people." Obviously, they do unreasonably obstruct and delay the collection of funds.

Still more restrictive provisions of the ordinance apply to so-called "promoters," who are defined as "any person who for pecuniary compensation or consideration received, or to be received, solicits or is engaged in the business of or holds himself out to the public as engaged in the business of soliciting contributions for or on behalf of any other person or any charitable association, corporation, or institution, or conducts, manages, or carries on * * * or is engaged in the business of or holds himself out as engaged in the business of conducting, managing or carrying on any drive or campaign for any such purpose; provided, however, that pecuniary compensation or consideration as used herein,

shall include, but shall not be limited to, participation on a percentage basis in any fund solicited, or raised, for or on behalf of any other person, firm, association or corporation; provided, further, that no person who is a bona fide paid officer or employee of a social service agency endorsed by the Board of Social Service Commissioners, shall be considered a promoter within the meaning of this article" (#44.01).

Section 44.19, subdivision 1, provides that "No promoter shall in any manner whatsoever, solicit within the City of Los Angeles any contribution for any actual or purported charitable use, purpose, association, corporation or institution without license from the Board so to do."

Subdivision 2, entitled "Application," states that "To obtain such license, such promoter shall make and file with the Board an application therefor in writing. In such application, the applicant shall set forth, in addition to such information as may be required by the Board: (a) The name and address of the applicant. * * * (b) A succinct statement of facts showing that the applicant * * * is of good character and reputation. * * * (c) The general plan, character and method in or by which the applicant proposes to conduct its or his business as a promoter."

Subdivision 3 is entitled "Bond," and states: "At the time of so filing with the Board an application for such license the applicant shall file and thereafter maintain with the Board a good and sufficient bond in the aggregate sum of * * * $2,000 running to the City of Los Angeles for the use and benefit of interested persons and parties. * * * Said bond shall be conditioned upon the strict compliance, by the Principal, with the provisions of this Article and the payment of any direct pecuniary loss sustained, through any act of grand or petty theft on the part of the Principal, by any donor or by any person on whose behalf the funds or personal property were solicited or received by the Principal. * * *"

Subdivision 5, entitled "Investigation," provides that "The Board shall examine such application and shall make such further investigation of the applicant and its or his affairs as the Board shall deem advisable. If from such examination the Board shall be satisfied: (a) That the ap-

plicant is of good character and reputation. * * * (b) That applicant has sufficient financial responsibility to carry out the obligations incident to any solicitation such applicant may make within the City of Los Angeles as such promoter and that all of the statements made in such application are and each of them is true and that * * * applicant * * * has (not) violated any of the provisions of this Article or has (not) engaged in any fraudulent transaction or enterprise, and that the applicant intends to conduct its business fairly and honestly, the Board shall issue to the applicant a license to solicit as a promoter within the City of Los Angeles, contributions. Otherwise, the Board shall deny the application and refuse to issue a license, and shall notify the applicant of the decision of the Board. * * *"

Under the heading "Revocation," subdivision 6 states that "All licenses issued hereunder shall be subject to the condition that the applicant thereafter shall cease and desist from acting as a promoter within said City of Los Angeles when ordered so to do by the Board if the Board finds after a hearing * * * that any act or omission of such promoter * * * in making any solicitation or in the conduct of the business of promoter within the City of Los Angeles is unfair, unjust, inequitable or fraudulent. The Board must suspend or revoke any such license if, after hearing upon notice, the Board shall find the existence of any of the grounds hereinabove enumerated for the denial of an application for a promoter's license; provided, however, that such suspension or revocation shall be discretionary with the Board if the only ground for such revocation is such that it does not affect the licensee's honesty and integrity, or his ability properly to perform his duties as a promoter."

Subdivision 7 deals with "Termination" of licenses at the close of each fiscal year, and subdivision 8 with "Funds." The latter subdivision provides that "No promoter shall commingle any contribution with the promoter's own funds or property, or fail at any time to maintain and keep all contributions separate and apart from the promoter's own funds or property. * * * (a) It shall be unlawful for any promoter to cause or permit any person

for pecuniary compensation or consideration received or to be received by such person to solicit or receive on his behalf or at his instigation, under his direction or control or in his employment, any contribution unless such person shall be registered as a solicitor by the Board. (b) No person shall be so registered as a solicitor unless he shall first appear personally before the Board and furnish satisfactory proof that he is a person of good moral character, that his reputation for honesty is good, and unless he first file with the Board and thereafter maintain a bond satisfactory to the Board in the sum of * * * $500.00, conditioned for the payment of any direct pecuniary loss which may be sustained by the promoter, by any donee, or by any person on whose behalf any contribution was solicited or received, through any act of grand or petty theft, committed by such person. (c) The provisions of paragraphs b, c, d, and e of subsection 3, above, shall apply to bonds filed pursuant to this subsection. (d) The Board shall collect a fee of * * * $1.00 for each such registration. * * *"

The comment which has been made concerning the unreasonableness of the ordinance provisions relating to solicitors applies with double force to these "promoter" provisions, and they are also subject to additional criticism.

From the definition of a "promoter," as heretofore quoted (#44.01, supra), it appears that the term is not confined to business solicitors, such as employees of a promotion agency handling fund raising campaigns, but includes any person who for pecuniary compensation solicits for another. Many solicitors for charity are indigent religionists. As an integral part of the exercise of their religious right they solicit funds in support of their cause and the charitable activities incident to it, and of necessity they retain some portion of the money collected in order that they themselves may be clothed and fed. To impose upon this class the burden of posting a $2,000 bond, of paying a license fee, and of showing sufficient financial responsibility to carry out the obligations incident to their solicitation is to seriously impede, if not prohibit, their undertakings at the outset. A required qualification of financial standing sufficient to enable such an applicant to post a $2,000 bond will neither insure honesty nor create a deter-

rent against fraud. In many cults and religions it is traditional that poverty and saintliness shall walk hand in hand. Many creeds view the possession of property and assets, or of more money than necessary for bare essentials, as a manifestation of sins of worldliness. Yet history shows that some of the finest deeds of charity and most unselfed works known to man have been accomplished by adherents of these views. It is thus a dangerous legislation which would impede the charitable impulses and hamper the undertakings of all but the financially able—which would give to men of property but deny to the poor the right equally possessed by both to develop and carry out the tenets of their creed.

The fee of $25 may not seem large but when it is combined with the expense and difficulty of obtaining a bond (if indeed such could be obtained by an indigent religionist even if the premium were paid for him), and establishing the vague condition of "financial responsibility," it involves cumulative burdens too heavy to be borne. In seeking to justify its declaration of the reasonableness of these provisions, the majority opinion states that the filing of a bond is "a common requirement in the regulation of occupations or activities involving the handling of entrusted funds," and that "The license fee is a reasonable one, covering the expenses of investigations and administration" (p. 20). This latter statement may have been inspired by the fact that the late federal decisions speak of the distinction between a license fee solely to defray the costs of enforcement of a regulatory statute and one for revenue purposes, condemning only the latter. But here, even if the regulatory provisions of the ordinance were otherwise reasonable as applied to religionists and justified the imposition of a fee sufficient to meet the costs of administration, there is no indication whatsoever that these costs would amount to $25 for the handling of each application or that that sum was fixed in contemplation of reimbursement for expenses.

The following excerpt from Murdock v. Pennsylvania, 319 U. S. 105, pp. 111-113 (63 S. Ct. 870, 891, 87 L. Ed. 1292, 146 A. L. R. 81), is pertinent: "It is plain that a religious organization needs funds to remain a going concern • • • Freedom of speech, freedom of the

press, freedom of religion are available to all, not merely to those who can pay their own way. * * * Those who can tax the exercise of this religious practice can make its exercise so costly as to deprive it of the resources necessary for its maintenance. Those who can tax the privilege of engaging in this form of missionary evangelism can close its doors to all those who do not have a full purse. Spreading religious beliefs in this ancient and honorable manner would thus be denied the needy. Those who can deprive religious groups of their colporteurs can take from them a part of the vital power of the press which has survived from the Reformation * * * In all of these cases the issuance of the permit or license is dependent on the payment of a license tax. And the license tax is fixed in amount and unrelated to the scope of the activities of petitioners or to their realized revenues. It is not a nominal fee imposed as a regulatory measure to defray the expenses of policing the activities in question. It is in no way apportioned. It is a flat license tax levied and collected as a condition to the pursuit of activities whose enjoyment is guaranteed by the First Amendment. Accordingly, it restrains in advance those constitutional liberties of press and religion and inevitably tends to suppress their exercise. * * * So, it may not be said that proof is lacking that these license taxes either separately or cumulatively have restricted or are likely to restrict petitioners' religious activities. On their face they are a restriction of the free exercise of those freedoms which are protected by the First Amendment. * * * Itinerant evangelists moving throughout a state or from state to state would feel immediately the cumulative effect of such ordinances as they become fashionable. The way of the religious dissenter has long been hard. But if the formula of this type of ordinance is approved, a new device for the supression of religious minorities will have been found. This method of disseminating religious beliefs can be crushed and closed out by the sheer weight of the toll or tribute which is exacted town by town, village by village. The spread of religious ideas through personal visitations by the literature ministry of numerous religious groups would be stopped."

It will further be noted that the provision defining "promoters" as heretofore quoted (#44.01, supra), includes a special exemption running in favor of bona fide paid officers and employees of social service agencies endorsed by the board. The conditions which a social service agency must meet to secure endorsement are set forth in a detailed separate ordinance, the relevant portions of which are incorporated in the majority opinion by marginal reference. One condition is: "(h) That the officers and employees of such corporation or association are persons of good moral character and reputation and that the corporation or association has exercised reasonable care in selecting persons of good moral character and reasonable experience as solicitors for its funds."

Apparently no bonding or license requirement is imposed upon these solicitor-employees, or in their behalf upon the organization they represent. Thus the solicitors for the organized charity hold a great primary advantage over the unorganized worker, with no sound reason for the discrimination. Graft and corruption can flourish, and fraud can emanate from high places as well as low, and through organization these evils are sometimes hidden and the more securely entrenched. Also the percentage of contribution retained to meet the expenses and recompense the employees of charitable institutions is apt to be higher than that retained by unorganized workers or sincere and humble religionists who sacrifice all in the practice of their religion. Abuses and breaches of trust do occur but who can say that the hazard is greater in unorganized classes of workers, whose illicit gains are probably small, compared with what is lost when a large institution becomes permeated with corruption.

Vital need exists for the individual as well as for the organized worker in both charitable undertakings and general benefits derived from the spreading of religious doctrines. There are many dark places where the light of organized charity does not penetrate—many needy whom it does not reach. To these people the tender ministrations of sincere and unfettered religionists bring succor and salvation. The unreasonable curtailment of this activity merely because some are addicted to fraudu-

lent and deceitful practices in the name of charity, is as unthinkable as would be the dissolution of established institutions merely because dishonesty and corruption have at times been uncovered in their administration. The public as a whole cannot be freed from the entire power of decision as to the worth of the cause for which they are solicited or their inclination to contribute. If the constitutional guarantees are to be upheld, then the public must expect to bear some portion of the burden of seeing that their gifts are made only to worthy and honestly administered causes.

Another objectionable provision of the ordinance is that which requires the promoter to furnish "a succinct statement of facts showing that the applicant • • • is of good character and reputation." Those who contribute to charity are not so much concerned with the "reputation" of the solicitor as they are with the intended use to which the donations are to be put. A most wicked man of public ill repute may espouse a very worthy cause or do a very good deed. Religionists and reformers are often called from the gutter whence they return to make expiation for their wrong doings by trying to save others from a like fate and to aid the redemption of those who may already have strayed. Forceful and effective work has been done by the reformed, turned reformer, and many of these people labor on without affiliation with any recognized institution and without financial help other than that gleaned through solicitation.

Hence, it would seem that if any statement is to be demanded in connection with a reasonable requirement for registration and identification it should embrace no more than an averment of present honesty and sincerity in the disbursement of money and property for the purpose for which they are solicited. Reputation is not an issue.

The requirement of section 44.19 that the officials may make an investigation and if "satisfied" that the applicant is of "good character and reputation" they may issue a license, places upon the applicant the burden of establishing this requirement as a condition precedent to the exercise of his right of religious liberty. Such a requirement

is not a sufficiently fixed and definite standard to safeguard the free exercise of the constitutional right here involved. In the exercise of their power the officials might conclude that an applicant does not qualify merely because of their opinion concerning his particular religious belief and creed. The way of the dissenter is usually hard and by reason of his views his reputation in the eyes of a large group, or a majority, may be far from good and his character at least questionable if not downright immoral. What fair qualification to the right of religious liberty can be conceived which limits its exercise to those who have good reputation and character, and denies it to those who have not?

It is said in Murdock *v.* Pennsylvania, supra (319 U. S. 105, 116): "Plainly a community may not suppress, or the state tax, the dissemination of views because they are unpopular, annoying or distasteful. If that device were ever sanctioned, there would have been forged a ready instrument for the suppression of the faith which any minority cherishes but which does not happen to be in favor. That would be a complete repudiation • • • of the Bill of Rights." And again in Cantwell *v.* Connecticut, supra, (310 U. S. 296, 310): "In the realm of religious faith, and in that of political belief, sharp differences arise. In both fields the tenets of one man may seem the rankest error to his neighbor. To persuade others to his own point of view, the pleader, as we know, at times, resorts to exaggeration, to vilification of men who have been, or are, prominent in church or state, and even to false statement. But the people of this nation have ordained in the light of history, that, in spite of the probability of excesses and abuses, these liberties are, in the long view, essential to enlightened opinion and right conduct on the part of the citizens of a democracy."

Subdivision 6 of section 44.19 of the ordinance is also subject to criticism. It authorizes the revocation of the license where the licensee, in making the solicitation, is unfair, unjust, inequitable, or fraudulent. These grounds, except the one last stated, are vague and uncertain and may well result in the same religious censorship arising from a determination of good character and reputation.

Subdivision 8 of the section, dealing with the qualifications of solicitors for promoters, is subject to the same objections as the rest of the section. The only difference is the amount of the fee and the size of the bond. It requires a "good moral character," and a reputation for honesty that is good.

It is not an obstacle to plaintiff's attack on section 44.19 that it has not sought a license or that if the public officials act arbitrarily their action is subject to jurisdictional review. The section on its face operates as a prior censorship on the free exercise of religious liberty. (Cantwell *v.* Connecticut, supra.)

There is another ordinance which concerns the regulation of pawnbrokers, secondhand dealers, and junk dealers (Los Angeles Municipal Code, #24.01). Although its provisions must be considered in relation to the operation of the store or so-called industrial department of plaintiff, the subject need not be developed here, for from the evidence it is clear that the store partakes of enough of the character of a commercial enterprise to justify the restrictions imposed. In the main I can concur in the conclusions (although not the reasoning upon which they are based), expressed in the majority opinion with respect to this phase of the case. The store is not conducted as a profit making institution but is in the business of selling used property. The operations of junk dealers and pawnbrokers have long been recognized as a distinct class of business subject to regulation under the police power in order to facilitate the recovery of stolen property and the preservation of health. (See 43 C. J. pp. 389-390; 43 Id. 410-411; 16 C. J. S., Constitutional Law, #189.)

It is not contended that the regulatory provisions of section 24.01 are invalid if considered apart from the question of the guarantee of religious liberty. Even assuming that the section must be viewed in the light of the right of free exercise of religion, there seems to be nothing arbitrary or unreasonable in its regulatory requirements. The measure is patently a police regulation and the specified fee is not a tax for revenue. That fee does not have combined with it the other financial burdens imposed under the ordi-

nance dealing with promoters and hence it is distinguishable. Moreover, the operation of the store has most of the aspects of an ordinary commercial enterprise.

Such ordinance (Los Angeles Municipal Code, #24.01) provides that persons who are to engage in the regulated business must annually apply for and receive a written permit. Under subsection (c), entitled "Requisites of Permits," it specifies the following requirements or "standards": (1) The original application must state "by street and number the place where such business is proposed to be conducted" or, in the case of junk collectors having no fixed place of business, "their residence by street number." The application "shall be signed by the applicant and shall contain his residence address." (2) The payment in advance of an annual fee of $25 ($50, if jewelry, watches "or similar secondhand merchandise" is to be dealt in). (3) Upon receipt of the application "the Board shall cause to be investigated the business of the applicant and location at which applicant proposes to engage in business as specified in said application. Thereafter the Board may issue a permit * * * for the remaining portion of the current year." (4) Persons operating under the ordinance must "secure an annual renewal of such permit commencing January 1st of the succeeding year." (5) Persons holding "an ordinary" permit must apply for and secure a "special permit," "in the manner provided * * * for securing ordinary permits," before dealing in "secondhand jewelry, precious stones, precious metals, * * * watches or other similar secondhand merchandise."

Further, regulations or "standards" set by the ordinance include the following: "The Board shall not grant any permit * * * to persons who fail, refuse or neglect to comply with the laws and ordinances relating to and regulating the business for which such permit is sought"; "If persons holding permits * * * shall violate any of the provisions of this Section (the Municipal Code section setting forth the ordinance in question) or any provision of any other ordinance, or any law relating to or regulating any such business, or shall conduct or carry on such business in an unlawful manner, the Board * * * shall revoke such permit," but only upon following the procedure "in

the manner provided in Section 22.02 of this Code" (which procedure is not questioned); permit holders "shall file reports, on forms provided by the Chief of Police, listing the merchandise received or purchased on the preceding day, the hour of such receipt or purchase, the "true name and address of the party making the sale, delivery or pledge as nearly as the same is known to or can be ascertained by such person together with a description of such party;" the number of the pawn ticket issued, if a pledge is involved, and the amount loaned, and a description of each article pledged, received or purchased. The permit holder is also required to keep "a complete record of all goods • • • pledged to or purchased or received by him" which record "shall be open at all times during business hours to the inspection of any member of the Police Department."

The mentioned provisions (and the same is true of the further provisions not herein epitomized) are not unreasonable or uncertain. Substantially nothing more is required for an original permit than the payment of the moderate fee and the filing of the written and signed application giving the data as to the location of the proposed business and the applicant's name and residence address. The requirements for compliance with law and the keeping and filing of reports, etc., after commencing business, are reasonably related to the nature of the business and the purposes of the regulations. These latter provisions furnish a proper and exclusive standard for guidance of the board in passing on applications for renewals of permits or proceedings to revoke permits. The very moderate requirements for original issuance of permits, hereinabove set forth, leave little if anything, beyond the suitability of the proposed location, to the discretion of the board. This ordinance fully meets the constitutional requirements that regulatory laws of this type establish reasonable standards for the guidance of the permit-issuing board.

Defendants contend that injunctive relief is not available to plaintiff and that there is no showing of irreparable injury. Generally, public officers may be enjoined from enforcing an unconstitutional statute, and section 526(4) of the Code of Civil Procedure and section 3424(4) of the Civil Code have no application to such situations. (Brock

v. Superior Court, 12 Cal. 2d 605 (86 P. 2d 805); Bueneman v. City of Santa Barbara, 8 Cal. 2d 405 (65 P. 2d 884, 109 A. L. R. 895).) Where a criminal statute or ordinance causes irreparable damage to property rights, the injured party may attack its constitutionality in an action to enjoin its enforcement. (See Jones v. City of Los Angeles, 211 Cal. 304 (295 P. 14); Sullivan v. San Francisco Gas Etc. Co., 148 Cal. 368 (83 P. 156, 7 Ann. Cas. 574, 3 L. R. A. N. S. 401); Los Angeles T. Ins. Co. v. Los Angeles, 52 Cal. App. 152, 156 (198 P. 1001); San Diego T. Assn. v. East San Diego, 186 Cal. 252 (200 P. 393, 17 A. L. R. 513); and Abbey Land etc. Co. v. San Mateo, 167 Cal. 434, 438 (139 P. 1068, Ann Cas. 1915C 804, 52 L. R. A. N. S. 508).)

An interference with the solicitation by plaintiff of contributions is an interference with its property rights in the sense that its right to collect and then use the funds will be impeded. Even if it be assumed that no injury to property rights is threatened, it seems that injunctive relief would be appropriate to restrain the enforcement of a criminal statute where the attack thereon consists of a bona fide claim that the statute violates one of the personal liberties guaranteed by the Constitution, and that claim is not wholly lacking in merit on its face. In such case the injury consists of the consequences of the enforcement of the law to the person, viewed in the light of the exalted standing of the constitutional guarantees. These consequences under the procedure in this state are serious.

A violation of the ordinance being a misdemeanor, the case would be cognizable only in an inferior court. From that court the only appeal available is to the superior court, or to its appellate department. If that court denied relief plaintiff would have no recourse to this court or the district court of appeal by appeal or certiorari, although in the event of being imprisoned he would have the remedy of habeas corpus. (Portnoy v. Superior Court, 20 Cal. 2d 375 (125 P. 2d 487).) The cases heretofore cited are not determinative of the point. They merely state the rule that injunctive relief *will be given* if injury to property rights is threatened. That does not exclude such relief where the injury is to personal rights.

It has been recognized that personal rights may be protected by equity, and they obviously should be, as they are more sacred than property rights. It is said in 28 American Jurisprudence, Injunctions, section 71: "However, there have always been some clearly defined exceptions to the general rule, and there is a progressive tendency on the part of the courts to remedy by injunction, injuries to personal rights. This, is, perhaps, as it should be, because the personal rights of citizens are more sacred and, by every test, of more value than things that may be measured by a purely monetary standard, and the courts have expressed difficulty in understanding why injunctive protection of the one class of rights should be placed above similar protection of the other. It may be added that the courts with great uniformity base their jurisdiction to protect purely personal rights by injunction nominally on an alleged property right, where in fact no property rights are invaded, so that the rule seems to be one of those known chiefly by its breach rather its observance." (See also, 14 A. L. R. 295.) Section 526 of the Code of Civil Procedure does not limit the injury to property rights. On the contrary it authorizes an injunction where the acts would produce great or irreparable injury "to a *party* to the action." See Nation v. Chism, 154 Okla. 50 (6 P. 2d 766).

For the reasons above stated, I am of the opinion that the judgment of the trial court should be modified by restricting the injunctive relief to alleged violations of all provisions of the Municipal Code here involved except section 24.01 which I believe to be valid.

Schauer, J., concurred.

"Edmonds, *J.*, Dissent: In this case, the trial court, upon undisputed evidence, found that the Gospel Army was procuring donations for the purpose of furthering its religious activities. Because these funds are used in part for the purpose of giving relief to persons in distress, Mr. Justice Traynor declares, as a matter of law its activities are charitable and not religious. I cannot concur in that conclu-

sion, nor in the construction of the Los Angeles Municipal Code as requiring the issuance of permits to either organizations or promoters without an appraisal of "the nature or worthiness of a religious cause." And if, contrary to the evidence and findings of the trial court, the Gospel Army, as a matter of law, is a charitable institution, then, by the challenged ordinance it is arbitrarily denied the right to exist unless it complies with undisclosed standards of the commissioners and carries on its operations in accordance with arbitrary and unreasonable regulations.

As Mr. Justice Henshaw pointedly stated in considering an earlier ordinance of the city of Los Angeles, which, like the one now before the court, gave municipal authorities broad and arbitrary power over every institution ministering to human suffering and spiritual need, charity is a fundamental part of religion. Speaking of the work of the Salvation Army, he said: "Profoundly impressed with the Founder's sympathy for the poor and afflicted, and with His teachings that 'Now abideth faith, hope and charity, these three, but the greatest of these is charity,' and 'Now, the end of the commandment is charity out of a pure heart,' it has made its special field of religious work the relief of the destitute and rescue of society's outcasts. It has found that it cannot lead the spirit of the weary and heavy burdened without first ministering to his physical necessities. While 'man does not live by bread only,' he cannot live at all without bread. Therefore, the charitable organizations of the Salvation Army are vital, integral parts of its religious life and work" (In re Dart, 172 Cal. 47, 49).

The Gospel Army also endeavors to gain converts for its religious doctrines and carries on activities which minister to material need. The expense of conducting its work is largely met by donations of money and second hand goods solicited from the public. The net proceeds from each of these main sources of income go into the Army's treasury from which is paid the cost of religious services, free distribution of tracts and religious literature, as well as food, lodging, clothing and other necessaries for those in need. The record discloses no segregation of such funds on the books of the Army as being for a religious or for a charitable purpose. Upon this evidence the trial court found that

if the Gospel Army is required to comply with the provisions of the ordinance, such enforcement "will amount to a prior restraint on the exercise of their religious activities within the meaning of the Constitution of the United States * * *" Mr. Justice Traynor sweeps aside the evidence and the trial court's findings upon the ground that, as a matter of law, charity has no place in religion, and whenever an organization carrying on religious activities steps aside from the promulgation of its spiritual doctrines to extend a helping hand by the alleviation of human suffering, it becomes subject to onerous and restrictive regulations. So narrow a view of the practice of religion runs counter to all of the fine principles of human conduct which, more and more, are leading men of good will to help those less fortunate along the daily path. A religious man, it has been said, is one "whose light shines in the dark places of the earth through righteous acts and helpful deeds."

Large groups of citizens of every faith and creed are regularly devoting much time and effort, at great personal sacrifice, to the cause of those who are in need. If the work in behalf of the less fortunate among us is done in the name of or in connection with the promulgation of a religious doctrine, then the Los Angeles ordinance authorizes the Department of Social Service to add to the indifference, inertia and self interest which solicitation must always overcome, either the condemnation or damnation by faint praise of an official bureau which is authorized to reach a conclusion without regard to anything but the personal opinion of some administrative officer as to the worthiness of the purpose. Whatever is done in the name of religion for a charitable purpose, the ordinance declares in effect, is to be viewed with suspicion and distrust. There can be preaching without official intervention but any practice of Christian virtues is to be carried on only under the watchful eye of the Department of Social Service according to its notions of "the public interest." And yet my associates say that such legislation lays no restraint upon religion freedom.

It is, of course, true that reasonable regulations may be imposed upon an organization carrying on religious activities. The rule, as stated by the Supreme Court of the United States is that "The general regulation, in the pub-

lic interest, of solicitation, which does not involve any religious test and does not unreasonably obstruct or delay the collection of funds, is not open to any constitutional objection, even though the collection be for a religious purpose."

More specifically, the court declared that "a State may protect its citizens from fraudulent solicitation by requiring a stranger in the community, before permitting him publicly to solicit funds for any purpose, to establish his identity and authority to act for the cause which he purports to represent" (Cantwell v. Connecticut, 310 U. S. 296, at pp. 304, 306). But the ordinance here challenged goes far beyond these limits.

As the statute reads, its provisions shall not be applicable to "solicitations made solely for evangelical, missionary, or religious purpose." These terms are not defined, yet the lawmakers provided "that in any case where it shall come to the attention of the Board that any solicitation has been or is being or intended to be made for evangelical, missionary or religious purposes but in such manner as in the opinion of the Board is calculated to give or may give the impression to the person or persons solicited in any such solicitation or to the public that the purpose of such solicitation is either in whole or in part charitable, then the Board, if in its opinion the public interest will be subserved thereby, shall investigate the matter of such solicitation and give publicity to its findings thereon in such manner as it may deem best to advise the public of the facts of the case" (Sec. 44.16). If this curious language means anything, it extends the exemption to any solicitation in behalf of a religious organization for a purpose in whole or in part charitable but allows the Board of Social Service Commissioners to state to the public, "in such manner as it may deem best," its official disapproval of any such practical application of the Master's teachings to human need or of the methods by which help is being extended. Under that construction of the exemption provision, no license for the appellant's solicitations may be required. But it probably would be more disastrous to the work of a religious organization to arbitrarily and publicly condemn its activities than to require it to obtain a license, and equally violative of constitutional guarantees.

But considering the provisions of the ordinance from the standpoint that, under its express terms, only solicitation for contributions to meet the expense of doctrinal church activities is exempt from regulation, although the good works done by an organization such as The Gospel Army are, to borrow Mr. Justice Henshaw's words, "vital, integral parts of its religious life and work," no person may solicit a contribution for its support who has not obtained an "information card." Such a card is issued by the Department of Social Service only following the filing of a "notice of intention" to solicit, which shall include the detailed information specified by section 44.05 of the Code (ante, p. ——). This information is not limited to facts relating to the identity of the proposed solicitor and his authority to act for a particular organization. Also there must be submitted detailed information relating to the organization's purpose and business affairs and those who are supporting it financially or employed in its activities. In short, all of the data demanded concern the merits of the cause which is asking the public for assistance and the scope of the work it is carrying on.

Moreover, the information card which allows one to solicit, providing he presents it to the person who is approached for a donation, "allowing him sufficient opportunity to read the same, before accepting any contribution • • •" (sec. 44.12), is not issued as of course upon the filing of the notice of intention. There is neither requirement nor even suggestion in the ordinance to support Mr. Justice Traynor's suggestion that these cards, "which are in effect permits to solicit, are issued automatically upon the filing of the required information and the payment of the 4¢ for each card." On the contrary, the Department of Social Service shall have the power: "(a) To investigate the allegations of the Notice of Intention, or any statement or reports; (b) To have access to and inspect and make copies of all books, records and papers of such person, by or on whose behalf any solicitation is made; (c) To investigate at any time the methods of making or conducting any such solicitation • • •" (Sec. 44.03).

A majority of the court sanction the indefinite terms of the ordinance relating to the issuance of a permit upon

the presumption that the Board of Social Service Commissioners will fairly investigate the facts in connection with each application and promptly make a determination upon them. It may not be assumed, say my associates, that the Board will whimsically or capriciously deny an application, and the courts will relieve from unjust and arbitrary action. The same argument was advanced by the state in Cantwell v. Connecticut, supra, and summarily rejected. The opportunity to obtain judicial correction, said Mr. Justice Roberts, speaking for the court, does not justify interference with constitutional rights. "The availability of a judicial remedy for abuses in the system of licensing still leaves that system one of previous restraint which, in the field of free speech and press, we have held inadmissible. A statute authorizing previous restraint upon the exercise of the guaranteed freedom by judicial decision after trial is as obnoxious to the Constitution as one providing for like restraint by administrative action" (p. 306).

Moreover, the inquisitorial authority of the Department is a continuing one. "Whenever, in the opinion of the Board of Social Service Commissioners the Notice of Intention does not disclose sufficient information for the public concerning the facts * * * required to be stated in such Notice or concerning the person or association making such solicitation or on whose behalf such solicitation is made, then, upon the request of said Department, there shall be filed, in writing, within forty-eight (48) hours after such request, such additional information as may be required by said Board upon the foregoing subjects." (Sec. 44.06.) This right may be exercised after the Board has made an investigation, and there is no limitation upon the time within which inquiries must be concluded. Also, there is no restriction upon the number of additional requests the Board may make for information, or any time fixed in the ordinance to prevent the Board from taking months to look into the purpose and scope of an organization's activities; designed delay is invited by the censorious terms of the legislation, and the wildest discretion is given to harass, condemn, delay and obstruct. And if perchance the applicant represents an unpopular cause, then the authority of the Board of Social Service Commissioners

to publish the results of its investigations "by such means as may be deemed best to reach the general public and persons interested" (Sec. 44.02) gives opportunity for the undermining of public confidence and provides a vehicle for vehicle for official propaganda which may do irreparable damage.

Occasion for discrimination is also afforded by section 44.03 which allows the Department of Social Service to issue an information card in a form stating either that the authorization given does or does not constitute an endorsement of the charitable association for which solicitation is to be made. Moreover, the information card may show the pertinent facts set forth in the notice of intention and any additional information "as shall in the opinion of the Board be of assistance to the public to determine the nature and worthiness of the purpose for which the solicitation is made * * *" The information card which the solicitor must carry with him, and either read to each prospective contributor or present to such person for his perusal, allowing him sufficient time to read it before accepting any donation, may therefore be a sizeable volume of data which in practice, if not in purpose, will effectively block public support of an organization which has a legitimate purpose and against which no cricism justly may be made.

To meet the demands of the city, the receipt required for each donation must be signed by the solicitor and contain "in addition to a description of the amount and kind of the contribution, substantially the following matters: (a) The name of the association, if any, in whose name or upon whose behalf the solicitation is made. (b) A statement as to whether the contribution solicited is to be applied for the general purposes of such association, if any, or for specific purposes, and if for specific purposes the nature thereof shall be clearly stated. (c) A statement that the Information Card, issued by the Department, was presented to the person making the contribution for his perusal prior to receipt by the solicitor of the contribution receipted for * * *" (Sec. 44.15.) Only by means of a traveling office could a solicitor comply with all these requirements.

As justification for his position, Mr. Justice Traynor asserts that "activities characteristic of the secular life

of the community may properly be a concern of the community even though they are carried on by a religious organization." A host of decisions is cited in support of that statement. But the cases relied upon are authority only for the proposition that certain activities such as the sale of religious periodicals by minors, beating a drum on the traveled portions of the city streets, and parades, although carried on by a church, are subject to reasonable regulation by the State under its police power; they do not purport to declare what may be done in the field of reasonable regulation of solicitation for religious purposes. Indeed, excluding *In re Dart, supra,* only two of them concerned the constitutionality of a statute regulating the solicitation of funds. One of these two, Prince *v.* Massachusetts, 321 U. S. 158, upheld a statute restricting the activity of minors. The other decision, Murdock *v.* Pennsylvania, 319 U. S. 105, expressly excluded consideration of the question now in controversy, for the court declared that there was no issue before it in regard to a registration system for solicitors.

As to *In re Dart, supra,* the statement from it which is quoted in the majority opinion has no application to solicitation for religious work; it concerns the regulation of organizations which seek contributions for charitable purposes. The declaration that, under the police power, there may be reasonable supervision over persons engaged in the occupation of obtaining money from the public for the maintenance of an organization carrying on charitable work is followed by the pronouncement: "Every person has the right, under our constitution, and perhaps withouts its guarantee, to solicit contributions for a worthy charitable purpose, provided he acts in good faith and honestly applies them to that purpose. The ordinance gives the commission power to deprive persons of that right without cause or reason. To the extent that they give this arbitrary power they are contrary to the constitution and void." (*In re Dart, supra,* p. 57). Certainly the constitutional guarantee gives as much, if not greater, protection to religious endeavors which include ministration to relieve human suffering. For as James wrote concerning faith without works, "If a brother or sister be naked, and destitute of daily food,

And one of you say unto them, Depart in peace, be ye warmed and filled; notwithstanding ye give them not those things which are needful to the body; what doth it profit?" (Jas. 2:5, 16.)

But if the practice of religion may be legally isolated beyond the contaminating reach of charity, then, in my opinion, the legislation is vulnerable to attack as unlawfully circumscribing the activities of every organization which carried on its work without the profession of religious doctrine. Unquestionably the occupation of the solicitation of contributions for charitable purposes may be subjected to regulation, but legislatures or municipalities may not, under the guise of the police power, impose unnecessary and unreasonable restrictions upon the use of private property or the pursuit of useful activities. (McKay Jewelers Inc. *v.* Bowron, 19 Cal. 2d 595; In re Fuller, 15 Cal. 2d 425; Skalko *v.* City of Sunnyvale, 14 Cal. 2d 213; In re Monrovia Evening Post, 199 Cal. 263; Frost *v.* City of Los Angeles, 181 Cal. 22; Ex parte Dickey, 144 Cal. 234; Larson *v.* Bush, 29 Cal. App. 2d 43.) Also the general and indefinite terms used in the ordinance wholly fail to meet the constitutional requirement that a regulatory statute must specify a standard for official action. (In re Dart, 172 Cal. 47; Hewitt *v.* State Board of Medical Examiners, 148 Cal. 593; Schaezlein *v.* Cabaniss, 135 Cal. 469; County of Los Angeles *v.* Hollywood Cemetery Assn., 124 Cal. 349; Ex parte Sing Lee, 96 Cal. 359; Yick Wo *v.* Hopkins, 118 U. S. 356; Hoyt Bros. Inc. *v.* Grand Rapids, 260 Mich. 447.)

The provisions of the Municipal Code which have been summarized in connection with the discussion concerning their application to the charitable work of a religious organization, effectively hamper and restrict any endeavor to better the lot of those in need of material aid and comfort if that effort does not conform to an undisclosed standard. The work of every organization must meet the approval of the department; such as do not, are unfit to live. Moreover, in its practical aspects the ordinance is particularly burdensome upon organizations such as the Gospel Army, which continually solicits donations. "Every person soliciting any contribution for any charitable purpose must file with the Department within 30 days after the close

of any such solicitation or within 30 days after a demand therefor by the Department a report to the Department, stating the contributions secured from or as a result of any such solicitation, and in detail all expenses of or connected with such solicitation, and showing exactly for what uses and in what manner all such contributions were or are to be disbursed or distributed." (Sec. 44.14.) What constitutes "the close of any such solicitation?" And to what extent must the organization show "exactly for what uses and in what manner all such contributions were or are to be disbursed or distributed?" Is every person who is a beneficiary of the organization's helpfulness to be named? Is the value of that aid to be stated in terms of money or spiritual comfort? Must a substantial part of the effort intended for human betterment be devoted to making reports to a governmental agency set upon the minute and continuing supervision of all charitable activities?

Very obviously, the purpose of these reports is to provide a basis for keeping each organization within the range of a policy which is not stated in the ordinance and may be as variable as differing views upon permissible bounds of social service. For an information card may be recalled by the Board upon receipt of data which, in its opinion, shall render incorrect any statement set forth in that document. Under such circumstances, the Board shall amend or correct the card, or issue a new one in accordance with the additional data obtained. But impliedly each card is to be issued for a period which need not be uniform as to all applicants, and is valid only during that time (sec. 44.02). Under those provisions, only by carrying on its work in accordance with the views of the Board of Social Service Commissioners, and making reports in such detail as to satisfy demands which cannot be measured against any standards set by law, may an organization continue.

Also, there is no standard or limitation provided in regard to the data printed upon the information card. As a solicitor must show this card to each prospective donor, allowing him sufficient opportunity to read it before accepting any contribution, the Board may arbitrarily express disapproval of a worthy charity or make the information so voluminous that solicitation would be effectively blocked.

And the unlimited power given to the Board to publish the results of its investigations is broad enough to authorize presentation to the public of confidential data concerning policies and details of management having no relation to reasonable licensing requirements.

If an organization runs the gauntlet of these provisions and is able to carry on its work to the satisfaction of the official censors of charitable purposes, every person whom it employs for "pecuniary compensation or consideration" to obtain subscriptions from the public must also secure a license. The way of an applicant for such a license is a hard one. In his application he must set forth, in addition to facts showing that he "is of good character and reputation", "such information as may be required by the Board." Thereupon, the Board shall make such investigation of the applicant and his affairs as it deems advisable. No limitation as to the extent of such an investigation is imposed and no time is fixed within which it must be concluded. Any ground that would have led to a denial of the license is also ground for its revocation.

If, contrary to the narrow interpretation of religion laid down by my associates, human kindness is included in its practice, then these provisions governing the licensing of individuals to solicit contributions are clearly invalid, for they go much further than to lay down a reasonable requirement for registration and identification. Indeed, there is no statutory statement of the data which an applicant must submit, for the specified information is "in addition" to that which may be required by the Board. The majority allows the regulation of solicitation for religious purposes to go far beyond the limitation specified by the United States Supreme Court in the *Cantwell* case, *supra*, by approving the requirements that a promoter or solicitor be granted a license only if the Board is satisfied that he is of good character and reputation and equal to the financial responsibility incident to the proposed solicitations that he file a bond and pay a license fee; and that he give a complicated form of receipt to each contributor. The provision authorizing the revocation of a license after a hearing, for any "unfair, unjust, inequitable or fraudulent" act or for any ground that would have led to a denial of the license

also goes far beyond the permissible bounds fixed for regulation of solicitation for a religious purpose.

And construing any organized plan for taking care of those in need of material aid as beyond the reach of religious duty or concern, the licensing provisions which have been mentioned in the next to the last paragraph unreasonably restrict the right of an individual to engage in the business of solicitation for charitable purposes and also fail to set up a definite standard which the applicant for a license must meet. The cases cited by the majority as authority for the proposition that a promoter or solicitor may be required to submit proof of his good character and reputation stand only for the rule that a state may do so in connection with regulation of the practice of a profession which requires the possession of special knowledge, skill and training, or the sale of merchandise of a particular character. (Leach *v.* Daughterty, 73 Cal. App. 83 (broker's certificate under the Corporate Securities Act); Riley *v.* Chambers, 181 Cal. 589 (license of real estate broker); Gundling *v.* Chicago, 177 U. S. 183 (license for sale of cigarettes).) These decisions, in my judgment, have no application to legislation laying down licensing requirements for the business of soliciting funds for charitable purposes.

A recent controversy in Michigan presented substantially the same question as is now before this court. An ordinance which prohibited the solicitation of contributions or the sale of goods "the proceeds from which, or any part thereof, are to be used for any so-called charitable purpose" without a written permit to be granted by the city manager, when it appeared, after investigation and report by a police officer, "that the charity is a worthy one" and that the applicants for a permit "are fit and responsible parties", was held to violate the provisions of a state constitution prohibiting deprivation of life, liberty, or property without due process of law. "It is requisite to the validity of the ordinance", said the court, "that it should state 'a standard for the guidance' of the official who passes upon the application for the permit. * * * The general and indefinite terms used in this ordinance wholly fail to comply with this requisite." (Hoyt Bros. Inc. *v.* Grand Rapids, *supra*, (128 A. L. R. 1363.)

Turning to the other provision of the Los Angeles Municipal Code which is in controversy, although, generally, speaking, the business activities of a religious organization come within the scope of regulations tending to protect the morals, safety or general welfare of the public, section 24.01 relating to dealers in second hand goods is also unconstitutional for the reason that it sets no standard to which an applicant for a license must conform. To carry on the business of a "secondhand dealer", one must "file an application in writing with the Board (of Police Commissioners) specifying by street and number the place where such proposed business is proposed to be conducted or carried on; * * * The application shall be signed by the applicant and shall contain his residence address. Upon receipt of such application the Board shall cause to be investigated the business of the applicant and location at which applicant proposes to engage in business as specified in said application. Thereafter the Board may issue a permit to the applicant which shall be effective for the remaining portion of the current year."

This enactment states no grounds justifying a denial of the application, specifies no time within which an investigation must be made, makes no provision for a hearing upon the application, and by the use of the word "may", impliedly allows the Board to grant or withhold official favor for any reason which whim or fancy may dictate. No standard of character or business responsibility is set for the guidance of the Board nor are there any qualifications specified for one desiring to deal in second hand goods. Such legislation has uniformly been held not to measure up to the requirements of constitutional guarantees. (In re Dart, *supra*; Hewitt *v.* State Board of Medical Examiners, *supra*; Schaezlein *v.* Cabaniss, *supra*; County of Los Angeles *v.* Hollywood Cemetery Assn., *supra*; Ex parte Sing Lee, *supra*; Yick Wo *v.* Hopkins, *supra*; Hoyt Bros. Inc. *v.* Grand Rapids, *supra*.)

Under these circumstances, in my opinion, as the right of The Gospel Army and those acting in its behalf to solicit contributions for either religious or charitable purposes is a property right, the unlawful interference with which

will cause irreparable injury, the trial court properly enjoined the enforcement of the ordinances here challenged (Brock *v.* Superior Court, 12 Cal. 2d 605; Bueneman *v.* City of Santa Barbara, 8 Cal. 2d 405), and the judgment should be affirmed."

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IN THE

Supreme Court of the United States

AND

In the Supreme Court of the State of California

No. L. A. 18808

THE GOSPEL ARMY, a corporation,

Appellant,

vs.

THE CITY OF LOS ANGELES, a municipal corporation, THE BOARD OF SOCIAL SERVICE COMMISSIONERS, DEPARTMENT OF SOCIAL SERVICE, and DAN O. HOYE, City Controller,

Appellees.

REPLY TO APPELLEES' OPPOSITION TO APPEAL AND MOTION TO DISMISS OR AFFIRM.

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TOPICAL INDEX.

PAGE

Judgment of reversal for further proceedings below are not final 4

The effect of the judgment of the State Supreme Court makes it final and appealable 6

A judgment or decree of the highest state court reversing the judgment of a lower court with directions to proceed in accordance with the opinion is a final appealable judgment or decree 7

Under the law and practice of the state of California every judgment which unqualifiedly reverses the decree of the lower court automatically remands the case and requires that further proceedings below be governed by the opinion of the higher court 8

It is settled law in California that where a judgment of the Supreme Court reads "judgment reversed" and states in an opinion principles and rules necessary to its decision, throughout all subsequent proceedings in the court below the opinion is binding and must be given effect 8

Unless the evidence is substantially different on a second trial the foregoing rule applied to all rulings pertaining to the evidence and motions relative thereto 9

The opinion herein of the California Supreme Court finally determined the rights of the parties concerned and terminates the litigation on its merits so that if an affirmance should be decreed by this court the court below would need only to execute its decree 9

Where a judgment of a trial court is reversed and remanded if the effect of the opinion of the higher court is to direct that a particular judgment be entered below, no re-trial can be had and a different judgment than that directed is without jurisdiction and void 12

PAGE

Well established liberalizing rules give appealable finality to the judgment herein involved 13

Rule 2 above. A judgment of a court of last resort which accomplishes "the whole purpose" of the action, as shown by the pleadings has appealable finality 17

The "mechanical rules" which restrict to the face of the judgment the scope of consideration to determine appealable finality and require that the decision appealed must have decided all issues of the case on the merits are merely rules of convenience 27

TABLE OF AUTHORITIES CITED.

CASES.	PAGE
Anselmo v. Sebastiani, 219 Cal. 292	9
Argenti v. Sawyer, 32 Cal. 414	12
Atlantic Gulf & P. Co. v. Wright, 11 Cal. App. 179	20
Aurenty v. Los Angeles Ry. Corp., 35 Cal. App. (2d) 615	9
Baird, Estate of, 193 Cal. 225	8
Baird, Estate of, 198 Cal. 490	8, 9
Baker v. White, 92 U. S. 176, 23 L. Ed. 480	5
Bean v. Duggan, 37 Cal. App. (2d) 491	9
Bostwick v. Brinkerhoff, 106 U. S. 3, 27 L. Ed. 73	5
Brett v. Frank & Co., 162 Cal. 336	9
Brown v. Union Bank, 4 How. 465, 11 L. Ed. 1058	5
Byers v. Colonial Irrigation Company, 134 Cal. 553	20
California Nat'l Bk. v. Stateler, 171 U. S. 447	15
Carondelet Canal & N. Co. v. Louisiana, 233 U. S. 362	14,15, 17
Central Sav. Bk. of Oakland v. Lake, 201 Cal. 438	8
Clark v. Willard, 292 U. S. 112, 78 L. Ed. 1160	7, 8, 14, 15
Cole v. Violetti, 319 N. S. 581	2
Craighead v. Wilson, 18 How. 202, 15 L. Ed. 332	17, 18
Department of Banking v. Pink, 317 U. S. 264, 87 L. Ed. 254	1, 3, 7
Douglas v. Jeannette, 319 U. S. 157, 87 L. Ed. 1324	26, 27
Ellis v. Nademacher, 125 Cal. 556	19, 20
English v. Olympic Aud., Inc., 10 Cal. App. (2d) 267	2
English v. Olympic Aud. Inc., 10 Cal. App. (2d) 196	12
Forgay v. Conrad, 6 How. 201, 12 L. Ed. 404	14, 15, 17, 18
Freeman v. Donohue, 188 Cal. 170	20
Georgia Ry. Co. v. Decatur, 262 U. S. 432, 67 L. Ed. 1065	5
Gray v. Cohen, 3 Cal. App. 75	20
Gregory v. Blanchard, 98 Cal. 311	20

PAGE

Gulf Ref. Co. v. United States, 269 U. S. 125, 70 L. Ed. 195....7, 8
Hartford Acc. Co. v. Bunn, 285 U. S. 169, 76 L. Ed. 685....4, 12, 27
Hazeltine v. Central Nat'l Bank, 183 U. S. 133, 46 L. Ed. 118 27
Heinlen v. Beans, 73 Cal. 240..... 12
Heinlen v. Martin, 59 Cal. 181..... 12
Honeyman v. Hanlan, 300 U. S. 14, 81 L. Ed. 476..... 25
Hume v. Bowie, 148 U. S. 244, 37 L. Ed. 438..... 5
Indiana ex rel. Anderson v. Brand, 303 U. S. 95, 82 L. Ed. 685 24
International Steel Co. v. Surety Co., 297 U. S. 657, 80 L. Ed. 961 24
Johnson v. Keith, 117 U. S. 198, 29 L. Ed. 888..... 5
Keller v. Lewis, 56 Cal. 466..... 12
Leerly v. McEwen, 208 Cal. 645..... 12
Lial v. Superior Court, 133 Cal. App. 31..... 12
Market Street Railway v. R. R. Com., 89 L. Ed. Adv. Op. 788 4
McCandless v. Los Angeles, 10 Cal. App. (2d) 407..... 2
Metropolitan Water Co. v. Kaw Valley etc. Dist., 223 U. S. 519, 56 L. Ed. 533..... 7, 8
Mitchell, Estate of, 126 Cal. 248..... 17
Mower v. Fletcher, 114 U. S. 127..... 12
Murdock v. City of Jeannette, 87 L. Ed. 1324..... 26
Mutual Orange Distributors v. Agricultural Prorate Com., 30 Fed. Supp. 937 2
Norfolk & S. Turnp. Co. v. Virginia, 225 U. S. 264, 56 L. Ed. 1082 27
Pacific Paving Co. v. Viselich, 1 Cal. App. 281..... 20
Phillips v. Patterson, 34 Cal. App (2d) 481..... 12
Pomona L. & W. Co. v. San Antonio W. Co., 152 Cal. 618..... 20
Radio Station WOW v. Johnson, 326 U. S. 120, ... L. Ed. 2, 6, 13, 14, 18, 27, 28

PAGE

Ramacciotti v. Ramacciotti, 131 Cal. App. 191 20
Reynolds v. Hosmer, 45 Cal. 616 17
Roger v. Struven. 44 Cal. App. 528 20
Schlosser v. Hamphill, 198 U. S. 173, 49 L. Ed. 1000 4
Security Inv. Co. v. Bieg-Hoffine Co., 28 Cal. App. (2d) 698.. 12
Sisco v. City of Los Angeles, 37 Cal. App. (2d) 6 9
Snoffer v. City of Los Angeles, 14 Cal. App. (2d) 650 12
Southwestern Bell Tel. Co. v. Oklahoma, 303 U. S. 206, 82 L. Ed. 751 25
Spense v. Cole, 137 F. (2d) 71 ..... 26, 27
Spilles v. Atchison, T. & S. F. Ry. Co., 253 U. S. 117, 64 L. Ed. 810 5
Tally v. Ganahl, 111 Cal. 418 9
Texas Co. v. Moynier, 137 Cal. App. 112 12
Tracy v. Holcombe, 24 How. 626, 16 L. Ed. 742 5
Union Mutual L. Ins. Co. v. Kirchoff, 160 U. S. 374, 40 L. Ed. 461 8
United States v. Rogue River Imp. Co., 269 U. S. 411, 70 L. Ed. 339 ..... 14, 15, 17
Westerfield v. New York L. Ins. Co., 157 Cal. 339 8

STATUTES.

United States Constitution, 14th Amendment 11, 16

IN THE

Supreme Court of the United States

AND

In the Supreme Court of the State of California

THE GOSPEL ARMY, a corporation,

Appellant,

vs.

THE CITY OF LOS ANGELES, a municipal corporation, THE BOARD OF SOCIAL SERVICE COMMISSIONERS, DEPARTMENT OF SOCIAL SERVICE, and DAN O. HOYE, City Controller,

Appellees.

REPLY TO APPELLEES' OPPOSITION TO APPEAL AND MOTION TO DISMISS OR AFFIRM.

Appellant will reply as briefly as possible to the three grounds upon which appellees move to dismiss this appeal or affirm the judgment of the Supreme Court of California and opposing this appeal.

I.

Appellant's counsel is confident that the first ground is without foundation. Yet, as indicated by this court in *Department of Banking v. Pink*, 317 U. S. 264, 87 L. Ed. 254, the question presented by appellees is one as to

which the bar has been in need of judicial guidance and the cases have not always harmonized. (*Radio Sta. WOW v. Johnson*, 326 U. S. 120, ... L. Ed. .....) Hence, no concise reply would be convincing.

Appellees fail to point out the supposed applicability of the decisions cited in their opposition statement and motion to dismiss or affirm.

The point first made, that a state statute making a decision final is not determinative of finality in appeals to this court is irrelevant since appellant has not relied on such a California statute. *Cole v. Violetti*, 319 N. S. 581, cited by appellees to support the point is equally inapplicable, although it rests upon a settled rule.

However, appellees accompany the above point with a reference to California law as interpreted by a Federal decision as to the finality of judgments of reversal for purposes of appeal. That case is *Mutual Orange Distributors v. Agricultural Prorate Com.*, 30 Fed. Supp. 937.

The opinion, *as pure dicta*, states substantially as appellees say, that a reversal in California without direction to the lower court is not a final judgment, but it is added, *"with the exception that the opinion of the court on appeal must be followed so far as applicable."* (Emphasis added.)

It is settled law in California that where a judgment is reversed for further proceedings without specific directions, if further proceedings are had the decision on appeal becomes binding as to all matters of law determined in the opinion on appeal. (*English Olympic Auditorium, Inc.*, 10 Cal. App. (2d) 267; *McCandless v. Los Angeles*, 10 Cal. App. (2d) 407, 409.)

Later in this reply argument appellant will show that under the rule of Federal decisions an opinion accompanying an unqualified reversal judgment by California Appellate Courts is a part of the judgment.

Hence, in the instant case, when the Supreme Court held that the charities of a religious organization could be separated by the city ordinance from its religious activities and treated as a business without infringing the right of religious freedom, this was a final determination, and the same must be true if its approval, (as against the challenge of the Gospel Army that they violate said right and/or the due process clause of the Federal Constitution), of numerous provisions and sections of the city ordinance involved, such holdings were binding on the lower court in all subsequent proceedings, and the whole purpose of the action was to secure a final determination of these and similar questions of law.

In *Department of Banking v. Pink*, 317 U. S. 264, 87 L. Ed. 254, cited by appellees, it is said:

> "For the purpose of finality which is prerequisite to a review in this court, the test is not whether under local rules of practice the judgment is denominated final, (citing cases), but rather whether the record shows that the order of the appellate court has in fact fully adjudicated rights and that that adjudication is not subject to further review by a state court (see Garman v. Washington University, 316 U. S. 98, 86 L. ed. 1300, 62 S. Ct. 962)."

Again, appellees have failed to elucidate the point or to reveal their idea as to why or how the judgment herein involved fails to comply with the test above set forth. It is believed that appellant's jurisdictional statement

shows conclusively that the instant judgment of the State Supreme Court fully adjudicated the Federal constitutional rights and questions involved and upheld the city ordinance involved as against all constitutional challenges.

Appellee's last case under the first ground is *Market Street Railway v. R. R. Com.*, 89 L. Ed. Adv. Op. 788, makes the test of appealable finality, that "the issues are adjudged and no other court has power to revise or modify it." Appellees fail to show in what respect the judgment involved herein is deficient under this test, and we will later show that it amply suffices.

Judgment of Reversal for Further Proceedings Below Are Not Final.

Ohlinger's valuable work on Federal Practice* states the above rule as "uniformly held".

However, an examination of the cases cited by Ohlinger and of many others listed in the Digests under Finality of Judgments reveals no decision which has gone beyond that rule and held that an unqualified "judgment reversed" decree lacks the finality essential to appealability.

The cases upon which Ohlinger's text relies and others of the same type, divide into three groups, as follows:

1. Reversal, remanding for *further proceedings below, not of ministerial character,* are not appealable.

   Hartford Acc. Co. v. Burm, 285 U. S. 169, 76 L. Ed. 685;

   Schlosser v. Hamphill, 198 U. S. 173, 49 L. Ed. 1000.

*Vol. 1, p. 826.

2. Judgment of reversal *with leave for further proceedings in the court below, not ministerial, held not final.*

Georgia Ry. Co. v. Decatur, 262 U. S. 432, 67 L. Ed. 1065;

Bostwick v. Brinkerhoff, 106 U. S. 3, 27 L. Ed. 73.

3. Essential finality held wanting in

Judgment of reversal ordering a new trial, in the court below, without further directions:

Brown v. Union Bank, 4 How. 465, 11 L. Ed. 1058;

Tracy v. Holcombe, 24 How. 626, 16 L. Ed. 742;

Baker v. White, 92 U. S. 176, 23 L. Ed. 480;

Spilles v. Atchison T. & S. F. Ry. Co., 253 U. S. 117, 64 L. Ed. 810;

Johnson v. Keith, 117 U. S. 198, 29 L. Ed. 888;

Hume v. Bowie, 148 U. S. 244, 37 L. Ed. 438.

The rule which makes the face of the judgment the sole criterion from which its finality or lack of finality is to be determined has been adhered to so frequently as to merit the designation "mechanical rule", yet careful research has failed to discover any instance of an appeal or writ of error being dismissed except where the judgment of the higher court directed something more than a ministerial act to be done in the lower court.

Hence appellant contends that the judgment herein involved, which merely reads, "Judgment reversed" is not controlled by any of the decisions construing judgments of the types above described.

On their face the words "Judgment reversed", neither require or authorize any further proceeding in the lower court.

To hold that this judgment does not terminate the proceeding requires an examination and consideration of matters extrinsic of the judgment—the opinion, California laws and decisions and the judgment which was reversed, and if these aids are invoked it will appear that the judgment is final.

Appellees' last named decisions adhere to one of the "mechanical rules" for determining finality, as it is termed in *Radio Station WOW v. Johnson*, 326 U. S. 120, ... L. Ed. .....

THE EFFECT OF THE JUDGMENT OF THE STATE SUPREME COURT MAKES IT FINAL AND APPEALABLE.

Appellant contends and expects to show that the judgment herein involved while near to that "penumbral area" recognized by this court and necessarily left undefined in the recent opinion in *Radio Station WOW v. Johnson, supra*, but that the class of judgment in which it belongs is in full accord with the long established general rules which confine consideration to determine appealable finality to the face of the judgment and require that it be a full determination of the merits of the case and be not subject to review by another court.

To elucidate this proposition fully and clearly necessitates greater elaboration than counsel would otherwise be warranted imposing on the court.

A Judgment or Decree of the Highest State Court Reversing the Judgment of a Lower Court With Directions to Proceed in Accordance With the Opinion Is a Final Appealable Judgment or Decree.

This was the form of the decree of the State Supreme Court in *Clark v. Willard*, 292 U. S. 112, 78 L. Ed. 1160. This court, with no dissents, held that the opinion became a part of the decree and that in the light of the opinion the portion of the decree from which the appeal was taken finally determined the rights of the parties which it concerned, and was, itself appealable.

Likewise it was held in *Metropolitan Water Co. v. Kaw Valley etc. Dist.*, 223 U. S. 519, 56 L. Ed. 533, 535, and *Gulf Ref. Co. v. United States*, 269 U. S. 125, 70 L. Ed. 195, 197, that a reversal remanding to the lower court for further proceedings *in conformity with the opinion* makes the opinion a part of the decree.

In each of these cases it was held that the Judgment in this form was appealable.

Of course, if the full decree, including the opinion does not provide finality, it is not appealable to this court, but appellant expects in that behalf to fully reconcile the instant judgment with the rule announced in *Department of Banking v. Pink, supra*, and other cases holding similarly.

Under the Law and Practice of the State of California Every Judgment Which Unqualifiedly Reverses the Decree of the Lower Court Automatically Remands the Case and Requires That Further Proceedings Below Be Governed by the Opinion of the Higher Court.

In California the identical provision contained in the decrees in *Clark v. Willard*,[1] *Metropolitan Water Co. v. Kaw Valley Dist.*; and *Gulf Ref. Co. v. United States* is added by legal implication to the each decree which reads "judgment reversed" and it must be presumed that courts rendering judgments in this form know that this is the law.

It Is Settled Law in California That Where a Judgment of the Supreme Court Reads "Judgment Reversed" and States in an Opinion Principles and Rules Necessary to Its Decision, Throughout All Subsequent Proceedings in the Court Below the Opinion Is Binding and Must Be Given Effect.

This rule is declared in the following, among many other cases:

Westerfield v. New York L. Ins. Co., 157 Cal. 339;

Estate of Baird, 198 Cal. 490;

Estate of Baird, 193 Cal. 225;

Central Sav. Bk. of Oakland v. Lake, 201 Cal. 438, 443;

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[1]The weight to be accorded this decision as a precedent is not weakened by such cases as *Union Mutual L. Ins. Co. v. Kirchoff*, 160 U. S. 374, 40 L. Ed. 461, and others therein cited, in which *the opinoin was not contained in the record.*

Anselmo v. Sebastiani, 219 Cal. 292;
Tally v. Ganahl, 111 Cal. 418;
Brett v. Frank & Co., 162 Cal. 336.

Unless the Evidence Is Substantially Different on a Second Trial the Foregoing Rule Applied to All Rulings Pertaining to the Evidence and Motions Relative Thereto.

Aurenty v. Los Angeles Ry. Corp., 35 Cal. App. (2d) 615, 621;

Bean v. Duggan, 37 Cal. App. (2d) 491;

Sisco v. City of Los Angeles, 37 Cal. App. (2d) 6;

Estate of Baird, 198 Cal. 490.

Hence, when the State Supreme Court rendered its judgment herein involved it must be presumed to have known and intended that its opinion would be binding on the lower court and that it must proceed, if at all, in accordance with the opinion, which became a part of the decree for that purpose.

The Opinion Herein of the California Supreme Court Finally Determined the Rights of the Parties Concerned and Terminates the Litigation on Its Merits so That if an Affirmance Should Be Decreed by This Court the Court Below Would Need Only to Execute Its Decree.

The State Supreme Court opinion first states that the suit is to enjoin the enforcement of the city ordinance involved "on the ground they abridged its religious liberty in violation of the constitution of the United States"; and that the trial court found that plaintiff "engaged exclusively in the promulgation, by literature

and word of mouth, of its religious beliefs, by and through its auxiliaries, and in the procuring of donations in the form of money and articles of value in the prosecution and furtherance of its religious activities," and that the trial court "enjoined defendants from further interference and threatened acts which would in any way prevent the free exercise of the religious liberty and freedom of worship of said plaintiff'." (Jur. Stat. Append. p. 1.)

The opinion then recites in detail the activities of the plaintiff, including the maintenance of a store where second-hand donated goods are sold, conducted by a solicitor. (Jur. Stat. Append. pp. 2-7.)

It then sets forth the substance of the sections of the ordinance. (Jur. Stat. Append. pp. 7-15.)

It considers first the provisions concerning the store and decides that it is not a religious activity, although the trial court found that its proceeds were used for its religious activities, and the opinion holds that the foregoing provisions are reasonable and the standards are adequate. (Jur. Stat. Append. pp. 7, 8.)

The opinion next takes up the remaining sections, (44.01 to 44.19), which regulate charities. It meets plaintiff's constitutional challenges of the provisions of the ordinance by first deciding that the charitable activities of a religious body may be served by law from its religious activities so that such charitable activities may be regulated as a business, and that this is done by the ordinance involved. (Jur. Stat. Append. pp. 16-23, and pp. 28, 29.)

It decides that these sections, considered as a whole and separately, are not "unduly burdensome or unrea-

sonable (Jur. Stat. Append. pp. 7, 8) and that their requirements may be enforced "without abridging its (plaintiff's) religious liberty in violation of the Constitution of the United States." (Jur. Stat. Append. pp. 16, 23.)

The opinion holds that certain sections challenged by appellant as violative of the 14th Amendment as fixing no standard for official action and for other constitutional reasons, are "neither vague nor uncertain and affords no possibility for censorship of religious beliefs." (Jur. Stat. Append. p. 28.)

It holds that certain sections challenged by the Gospel Army as discriminatory, arbitrary and oppressive do not "discriminate against plaintiff or other religious organizations or censor their religious beliefs." (Jur. Stat. Append. pp. 26, 28.)

It holds that certain sections challenged by the Gospel Army as violative of the 14th Amendment as arbitrary and unreasonable classifications and discriminatory against religious organizations are "reasonable and the standards provided are adequate." (Jur. Stat. Append. p. 2.)

Broadly, the opinion shows that the ordinance involved, as a whole, and each of its sections had been challenged as in violation of the 14th Amendment to the Federal Constitution upon one or more grounds; that the opinion upholds their validity in every instance; that no other questions are considered, and the only issues regarded or decided are the foregoing; also, that evidence in the lower court as to the Gospel Army's activities was undisputed and the findings were not challenged. (Jur. Stat. Append. pp. 1 to 29.)

Hence, it cannot be doubted that the instant State Supreme Court opinion and judgment, being binding on

the lower court, in effect directs the dismissal of the action or entry of judgment for the defendants, thus rendering to the higher court's decree the essential finality, unless the order of dismissal is appealable.

Hartford Acc. Co. v. Bunn, 285 U. S. 169, 76 L. Ed. 685;

Mower v. Fletcher, 114 U. S. 127.

A judgment of a lower court entered as directed by a higher appelate court is not appealable.

Heinlen v. Beans, 73 Cal. 240;[2]

Phillips v. Patterson, 34 Cal. App. (2d) 481, 487;

Heinlen v. Martin, 59 Cal. 181;

Keller v. Lewis, 56 Cal. 466;

Argenti v. Sawyer, 32 Cal. 414.

Where a Judgment of a Trial Court Is Reversed and Remanded if the Effect of the Opinion of the Higher Court Is to Direct That a Particular Judgment Be Entered Below, No Re-Trial Can Be Had and a Different Judgment Than That Directed Is Without Jurisdiction and Void.

Snoffer v. City of Los Angeles, 14 Cal. App. (2d) 650;

English v. Olympic Aud. Inc., 10 Cal. App. (2d) 196, 201;

Lial v. Superior Court, 133 Cal. App. 31;

Heinlen v. Martin, 59 Cal. 181;

Keller v. Lewis, 56 Cal. 466.

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[2]To the same effect, see: *Leerly v. McEwen*, 208 Cal. 645; *Security Inv. Co. v. Bieg-Hoffine Co.*, 28 Cal. App. (2d) 698; *Phillips v. Patterson*, 34 Cal. App. (2d) 481; *Texas Co. v. Moynier*, 137 Cal. App. 112; *Lial v. Superior Court*, 133 Cal. App. 31.

WELL ESTABLISHED LIBERALIZING RULES GIVE APPEALABLE FINALITY TO THE JUDGMENT HEREIN INVOLVED.

Appellant will concisely point out that certain respected decisions, nearly all of which are relied upon or referred to with approval in the recent *Radio Station WOW v. Johnson* opinion (326 U. S. 120), have established rules which give to the words "final decrees" as used in applicable acts of Congress "a more liberal" and "reasonable construction" and "one more consonant with the intention of the Legislature"[3] than the "Mechanical Rule[4]" for appealable finality, and appellant will then show that the instant State Supreme Court judgment fully qualifies as final under such rules.

The cases to be relied upon generally divide into two groups. They set up standards which qualify and liberalize strict rules regarding appealable finality, from which it results that the following judgments have such finality:

1. Where a judgment directs the immediate delivery of the property involved causing great or irreparable injury and asserted Federal rights are disposed of.[5]

2. A judgment which accomplishes "the whole purpose of the suit," as shown by the pleadings.[6]

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[3]In the *Forgary v. Conrad* opinion the above quoted language was used in describing the rule announced therein, and in cases cited.

[4]In the *W. O. W.* decision Justice Frankfurter applies this term to the commonly used test of appealable finality which requires that.

3. This court regards "serious public consequences" if involved in a judgment, not technically final, but where Federal questions appealable here have been adjudged by the State court as a substantial contributing factor to justify departure from the strict rule.[7]

Liberalizing Ground 1.

(For brevity, reference is made to it as stated above.)

It was held in the *Radio Station WOW* decision that although an accounting remained to be taken, since no Federal question could arise in that matter and the State Supreme Court's judgment had adjudicated the Federal questions involved and had directed immediate delivery of physical property resulting in the possible termination of the radio station public deprivation, the decree was final for purpose of review by this court. It is said that "The case comes squarely within Forgay v. Conrad, *supra*, and Carondelet, *supra*."

In the *Forgay v. Conrad* case this court held that the part of the decree of the lower court which directed immediate delivery of property involved was final, although not so "in the strict, technical sense of that term," and that other portions were not final. The appeal was from the first mentioned portion and a motion to dismiss was denied.

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[5]*Clark v. Willard; Forgay v. Conrad; Carondelet C. & U. Co. v. Louisiana; Radio Sta. W. O. W. v. Johnson*, all *supra*.

[6]*Carondelet Canal & U. Co. v. Louisiana; Winthrop Iron Co. v. Meeker; Craighead v. United States v. Rogue River Imp. Co.*

[7]See *Radio Sta. W. O. W. v. Johnson*. That element was present also in the *Carondelet* and *Forgay*, and *Gulf Refining Company* cases.

The considerations which moved this court to reach this conclusion were that although "according to the last provision of the decree, the bill was retained merely for the purpose of adjusting the accountings[8] referred to the master." The other matters brought into the controversy were finally disposed of and it is said, "if these appellants, therefore, must wait until the accounts are reported by the master and confirmed by the court, they will be subjected to irreparable injury."

In *Clark v. Willard*, 292 U. S. 112, 78 L. Ed. 1160, it was held that the judgment of the State Supreme Court had the requisite finality, although it continued the receivership and other proceedings incident thereto, and further judicial proceeding would be necessary, because the decree confirmed a creditor's levy and execution and would "override" the liquidator's title to property levied upon, and would thus irretrievably deny to the liquidator the benefit of the full faith and credit provision of the Federal Constitution and had finally fixed the rights of the parties.

The *Clark v. Willard* opinion cites *United States v. Rogue River Imp. Co.*, 269 U. S. 411, 70 L. Ed. 339, and *Forgay v. Conrad*, 6 How. 201, 12 L. Ed. 404.

In *Carondelet Canal & N. Co. v. Louisiana*, 233 U. S. 362, in denying a motion to dismiss the opinion not only asserts that the State Supreme Court's decree was final in directing the immediate deliv-

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[8]Under the technical mechanical rule it has often been held that this provision of a decree robs it of appealable finality. See *California Nat'l Bk. v. Stateler*, 171 U. S. 447; *McCorkey v. Toledo & Ohio R. Co.* and cases cited.

ery of property involved, but it also stresses that the "Federal rights asserted by the canal company were injuriously disposed of by the decree, and that the decree "has substantial finality" in that "all was decreed which it was the purpose of the suit to have decreed," to-wit, "the Federal right asserted by the canal company."

The instant judgment has the requisite finality under liberalizing rule 1 because its effect is to immediately dispose of and take away appellant's asserted right of religious freedom and certain property rights (store and donations) in violation of the 14th Amendment.

The judgment of the lower court which it reversed reads:

> "It is ordered, adjudged and decreed: That the defendants and each of them * * * are hereby restrained and enjoined from the further interference and threatened acts, which would in any way prevent the free exercise of the religious liberty and freedom of worship of the said plaintiff."[9] (Jur. Stat. Append. p. 1.)

The trial court found, (and the finding was not challenged), that "unless the said defendants are enjoined and restrained from doing the things heretofore mentioned" (enforcing the provisions of the city ordinances against plaintiff) "the rights of plaintiff to worship and carry on said religious activities * * * will be infringed and said plaintiff will suffer irreparable damage." [Clk. Tr. pp. 32-34.]

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[9]It will be shown in discussing Liberalizing Rule 2 that the findings and pleadings render the judgment definite and certain.

The legal effect of the reversal of the judgment below instantly wiped it out[10] and left the defendants free to immediately close appellant's store where donated goods were sold and to arrest its solicitors, its promoter-solicitor and its officers unless license fees were paid, bonds executed and filed, and all other provisions complied with, all of which the trial court found would result in "irreparable injury" to the plaintiffs.

On principal the effect of this judgment is just as immediate and as destructive of constitutional rights which are at least as substantial as any involved in the decisions[11] which declare the rule now being discussed.

Rule 2 Above. A Judgment of a Court of Last Resort Which Accomplishes "The Whole Purpose" of the Action, as Shown by the Pleadings Has Appealable Finality.

The *Carondelet Canal & N. Co. v. Louisiana* opinion has been quoted to this effect. (*United States v. Rogue River Imp. Co.*, 269 U. S. 411, 70 L. Ed. 339, upholds this rule.

In the *Winthrop v. Meeker* case this court announced broadly that a decree is final for the purposes of appeals to this court, where "The whole purpose of the suit has been accomplished."[12]

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[10] *Reynolds v. Hosmer*, 45 Cal. 616; *Estate of Mitchell*, 126 Cal. 248.

[11] Full faith and credit and property rights.

[12] The principle and doctrinaire of this decision is amply warranted by the opinions upon which it relies.—*Craighead v. Wilson*, 18 How. 202, 15 L. Ed. 332, and *Forgay v. Conrad*, 6 How. 201, 12 L. Ed. 404.

It was determined that "the decree is final on all matters within the pleadings, and nothing remains to be done but to adjust the accounts between the parties growing out of the operations of the defendants during the pendency of the suit,"—although a receivership was continued to carry on the business of the corporation involved.

In the *Craighead*[13] *v. Wilson,* 18 How. 202, 15 L. Ed. 332, this court reviewed earlier applicable decisions and said:

> "To authorize an appeal, the decree must be final in all matters *within the pleadings,* so that an affirmance of the decree will end the suit. To apply this test, in all cases, cannot be difficult." (Emphasis added.)

The instant judgment accomplishes the whole purpose of the suit as shown by the pleadings. It is shown in the jurisdictional statement herein[14] that the complaint seeks injunctive relief against the enforcement by defendants, through criminal prosecutions and other acts of the City ordinance involved and of each of its essential provisions on Federal Constitutional grounds alone; that the defendants answered and asserted their right to enforce every section and provision of said ordinance and based their defense solely upon the affirmation, set forth in that pleading, that no section or provision of said ordinance infringes the constitutional rights of the plaintiff as claimed in the com-

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[13]Certain decisions have expressed veiled disapproval of the *Forgay v. Conrad* decision. However, any doubt arising therefrom concerning its standing is removed by the recent opinion in *Radio Station W. O. W. v. Johnson, supra,* and this, perforce, gives added weight to the *Craighead* decision which is relied upon in the *Forgay v. Conrad* opinion.

[14]Jur. Stat. pp. 25, 26.

plaint. There was no other defense pleaded and no other issue presented (Jur. Stat. pp. 26-32).

The sole purpose of the action was to secure judicial protection of appellant's asserted constitutional rights, and a judicial determination concerning them. The trial court provided the remedy sought and the Supreme Court in reversing the lower court's judgment wiped the remedy out and decided that no constitutional right of the plaintiff was infringed by any provision of the City ordinance involved or the enforcement thereof by defendants against plaintiff.

Hence, appellant contends that the instant judgment of reversal has appealable finality.

II.

Appellee's attack upon the judgment of the trial court as vague and indefinite is irrelevant to the issues presented in this proceeding in opposition to the appeal.

This necessarily results from the doctrine of the decisions of this court which have been discussed above.

The appeal is not taken from the judgment of the lower court, although its findings of fact which were not challenged in the higher court may be important. Appellees have not claimed and could not plausibly contend that the judgment of the State Supreme Court is vague or indefinite.

Appellees rely upon *Ellis v. Nademacher*, 125 Cal. 556, but essential differences exist between the conditions in that case and those in the instant proceeding.

It is well settled in California, as elsewhere, that a judgment, even though uncertain and indefinite on its face, may be rendered certain and definite when construed in connection with other parts of the judgment roll.

This rule was recognized and applied in *Byers v. Colonial Irrigation Company*, 134 Cal. 553, cited by appellees. In that case the Supreme Court consulted the findings and ordered the decree amended to conform to them.

In the following cases the pleadings were examined and the judgment was construed in their light:

Pomona L. & W. Co. v. San Antonio W. Co., 152 Cal. 618;

Freeman v. Donohue, 188 Cal. 170;

Atlantic Gulf & P. Co. v. Wright, 11 Cal. App. 179;

Gray v. Cohen, 3 Cal. App. 75.

The findings supplied clarification of the judgment or limited it in these cases:

Ramacciotti v. Ramacciotti, 131 Cal. App. 191;

Roger v. Struven, 44 Cal. App. 528;

Pac. Paving Co. v. Vizelich, 1 Cal. App. 281.

In the *Nademacher* case the judgment was by default and the opinion says, "It is well settled that a judgment by default cannot give any relief in excess of that demanded in the complaint."

The other cases cited by appellee are not in point. They are *Gregory v. Blanchard*, 98 Cal. 311 and *Byers v. Col. Irr. Co.*, 134 Cal. 553.

In each case the *plaintiff* appealed and it was held that the decree in his favor was too general and vague *to give him the relief to which the allegations of the complaint entitled him.*

In the instant case the pleadings and the findings leave no room for doubt as to the acts and things referred to and enjoined by the judgment.

The amended complaint alleges specifically that the defendants required the Gospel Army to "apply for and receive" a "permit" authorizing it to continue its "religious activities" before continuing the same and "has demanded" of plaintiff that it pay to said city a "license to operate the store" and the "disposal" of personal property "donated and given to plaintiff by the general public, the proceeds therefrom being used by the plaintiff in the furtherance of said religious organization" and that defendant "have and threatening" criminal prosecution of plaintiff if it fails to comply with such requirements and others which are described. (Jur. Stat. pp. 25, 26.)

Defendant's answer avers that defendant's claim that plaintiff must secure "a permit" "from the Board of Police Commissioners" and in not doing so is "subject to criminal prosecution" and defendants "contend that under Section 24.01 . . . of the said Municipal Code a permit must be secured" from said Board for the operation of said store, and also, that defendants allege that plaintiff must first "apply for and receive" a "permit" authorizing plaintiff to "continue its activities in the City of Los Angeles."

Said answer avers that the plaintiff is subject to the "rules and regulations and laws" of the "defendant city of Los Angeles pertaining to charities and relief", and specifies many of the sections of the ordinance involved, among which are those pertaining to solicitors and promoters of money or property (44.01 to 44.19), and the entire regulations of such solicitations (Jur. Stat. pp. 26, 27), and the "activities" of plaintiff in said city are shown by the amended complaint to include soli-ita-

tions for money and goods whose proceeds are used in furtherance of its religious activities, among which are its charities. (Jur. Stat. pp. 25, 26.)

The answer directly places in issue the character of plaintiff's activities as religious or charitable and avers that the ordinance involved empowers the said Board and its officers and employees to make all of the exactions and exercise all of the powers provided for in said ordinance (Jur. Stat. pp. 29, 30), which powers as applied to plaintiff as shown by defendants' answer are the right to require plaintiff's solicitor or "promoter" who sells plaintiff's donated goods to secure a "license" and pay a license fee and provide a $2,000 bond; the right to require plaintiff's solicitors for donations of money and goods apply for permit and to refuse the same if any donations are used for charity; and the right to compel the Gospel Army and its promoter and solicitors to comply with all of the provisions of said ordinance pertaining to solicitations, supplying data and accounts to the Board, authorizations from it and the maintenance by it as detailed a bookkeeping system. (Jur. Stat. Append. pp. 7-10.)

In short, by its answer the defendants asked for a decision by the trial court as to the applicability of the entire city ordinance to the activities of the Gospel Army.

Hence the decision which appellees contend is indefinite when clarified by the pleadings enjoins defendants from applying said ordinance or any provision thereof to the Gospel Army or to any of its activities. This accords with the findings and they in turn clarify the judgment; these findings are quoted in the Jurisdictional Statement, pages 29 to 31, as follows:

> "It is true that the said Defendants have notified the Plaintiff that it is subject to the rules, regulations

and laws of the said Defendants pertaining to charities and relief and that the said Plaintiff organization is subject to the enforcement of said rules and regulations by the Board of Social Service Commissioners and the Department of Social Service, and that before said Plaintiff organization can continue their religious activities in the City of Los Angeles they must first apply for and receive from the said Board of Social Service Commissioners and Department of Social Service a permit authorizing said Plaintiff organization to continue their religious activities in said City of Los Angeles, the said Board of Social Service Commissioners and Department of Social Service having full power, under the ordinances of said City of Los Angeles, to pass on and reject all applications coming before them; that the Defendant, Dan O. Hoye, the City Controller, of the City of Los Angeles, has notified and demanded of the Plaintiff that it must pay to the City of Los Angeles, through his office, a license to operate the store of Plaintiff, which store is being conducted by Plaintiff for the sale and disposal of salvaged personal property donated and given to the said Plaintiff by the general public, the proceeds derived therefrom is used by the Plaintiff in the furtherance of said religious organization, and that said Dan O. Hoye and all of the other defendants contend and state that the Plaintiff is violating the ordinances of the City of Los Angeles pertaining thereto and is subject to criminal prosecution, and the said defendants have and are threatening criminal prosecution of this Plaintiff.

"It is true that if this Plaintiff is required to obtain a permit and the payment of the license as a condition of their soliciting and receiving donations as aforesaid, to be used in the furtherance of said religious activities, will amount to a prior restraint on the ex-

ercise of their religious activities within the meaning of the Constitution of the United States, both as to the First and Fourteenth Amendment thereof, and is an infringement upon the free exercise of their religious liberty as protected by the said constitution.

"It is true that unless the said Defendants are enjoined and restrained from doing the things hereinbefore mentioned the rights of the Plaintiff to worship and carry on said religious activities their right to the free exercise of their religious liberty will be infringed and said Plaintiff will suffer irreparable injury therefrom." [Clk. Tr. pp. 32-34.]

That opinion properly and necessarily treats the issues presented as did the trial court and decides them on the Constitutional grounds shown in the Jurisdictional Statement, in the end holding that said ordinance and all of its provisions valid and not violative of appellant's right to freedom of religion or the exercise thereof of its rights guaranteed by the due process clause of the Constitution of the United States.

A further answer rebutting appellees' contention concerning the alleged vague nature of the trial court judgment, is that the Supreme Court did not once mention appellees' argument on that question, but did exhaustively consider and fully decide each of the several Federal questions presented.

Hence jurisdiction herein will be upheld.

Indiana ex rel. Anderson v. Brand, 303 U. S. 95, 82 L. Ed. 685;

International Steel Co. v. Surety Co., 297 U. S. 657, 80 L. Ed. 961.

The foregoing renders irrelevant appellees' contention and cases cited to sustain the proposition that unless the decision of the Federal question was necessary, an appeal will be dismissed.

However, said decision, to-wit, *Honeyman v. Hanan*, 300 U. S. 14, 81 L. Ed. 476 and *Southwestern Bell Tel. Co. v. Oklahoma*, 303 U. S. 206, 82 L. Ed. 751 are otherwise inapplicable herein.

In the first case, aside from a certificate by the State Supreme Court in its remittitur there was nothing to show that a Federal question was presented. It was merely held by in this court that the function of such certificate is to clarify the record if it needs clarification, but that the certificate is not controlling and the Supreme Court will decide for itself from the record whether these essentials are shown.

In the instant case the Jurisdictional Statement suffices, without the aid of the certificate to show that Federal questions were properly raised and were necessarily determined by the State Supreme Court.

In the *Bell Telephone* case this court indicated that from the record presented it cannot be determined whether the State Supreme Court made its decision on a Federal or non-federal ground.

Hence the general rule as stated in that case was unnecessary to the decision thereof.

However, the rule has no application in this case because the jurisdictional statement clearly shows that the California Supreme Court decided a half dozen Federal questions and appellees fail to point out or to claim that a non-federal question was considered or decided.

III.

Appellees' third ground is entitled "No Substantial Federal Question Is Involved." However, it is not contended that the questions decided by the Supreme Court of the State of California and by the lower state court are not substantial Federal questions.

Instead, reliance is placed on a quotation from *Spense v. Cole*, 137 F. (2d) 71, to the effect that even though a Federal question is presented a *Federal Court will not enjoin a prosecution in a state court for violations of state laws* unless it is shown that irreparable injury would probably result.

This rule is announced and followed in *Douglas v. Jeannette*, 319 U. S. 157, 87 L. Ed. 1324, wherein it is said:

> "Hence the arrest by the Federal courts of the processes of the criminal law within the states, and the determination of questions of criminal liability under state law by a Federal court of equity, are to be supported only on a showing of irreparable injury, both great and immediate."

Again it is said, reference being to the District Court:

> "But the trial court made no finding of threatened irreparable injury to petitioner or others, and we cannot say that the declared intention to institute other prosecutions is sufficient to establish irreparable injury in the circumstances of this case."

It is further said that in view of the *Murdock* decision[15] it would not be assumed that other prosecutions under the ordinance involved would be instituted.

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[15] *Murdock v. City of Jeannette*, 87 L. Ed. 1324, had just been decided and held that the same ordinance was unconstitutional and void.

The decisions in the *Spense v. Cole* and *Douglas v. Jeannette* cases have no application herein because:

1. As has been herein shown in the instant case the trial court found that "Plaintiff will suffer irreparable injury" "unless the defendants are enjoined and restrained from doing the things hereinbefore mentioned,"
2. The rule announced in said Federal decisions is restricted to Federal District Courts and cases in which such courts would restrain criminal prosecutions *in state courts under state laws.*

The "Mechanical Rules" Which Restrict to the Face of the Judgment the Scope of Consideration to Determine Appealable Finality and Require That the Decision Appealed Must Have Decided All Issues of the Case on the Merits Are Merely Rules of Convenience.

This proposition is recognized in *Radio Station WOW v. Johnson,* 326 U. S. 120, ... L. Ed. ....., and has been asserted in other cases among which are *Hazeltine v. Central Nat'l Bank,* 183 U. S. 133, 46 L. Ed. 118; *Hartford Acct. Co. v. Bunn,* 285 U. S. 169, 76 L. Ed. 785 and *Norfolk & S. Turnp. Co. v. Virginia,* 225 U. S. 264, 56 L. Ed. 1082.

The *Hazeltine* decision said that a judgment of the highest state court reversing that of a lower court and remanding the case for further proceedings frequently has been held not to be a final judgment because examination into the record to determine whether such a judgment, in a particular, is final, "would lead to inquiries, with regard to the actual final disposition of the case by the Supreme Court, which it might be difficult to answer," this Court has "made the face of judgment the test of its finality."

Both of the other decisions quote the above statement, with approval and the Norfolk opinion adds that the rule which makes "the face of the judgment" the only "criterion resorted to" is the "only means of obviating the risk of confusion" which might arise if other parts of the record were resorted to, and that the distinction made is "not one of principle."

It is implicit in the opinion in the *Radio Station W. O. W.* opinion that the rule which interprets the term "final judgment" so as "to preclude reviewability here where anything further remains to be determined by a state court, no matter how disassociated from the only Federal issue that has finally been adjudicated by the highest court of the state," is not based upon or sustained on principle or jurisdictional grounds but like the other rule has been "an important factor in the smooth working of our federal system."

Hence the rule that a judgment which reads "judgment reversed, cause remanded for further proceedings" or similar words, is not final, is one of court convenience.

Of course Court-made rules of convenience cannot be jurisdictional. The same authority which makes them, has the power, in proper cases and in the interest of justice, to make reasonable deviations. The Court's action is necessarily discretionary. Although some of the decisions refer to the matter as jurisdictional the foregoing cases and those principally relied upon in the late decision in *Radio Station W. O. W. v. Johnson,* refute that concept. That decision shows that deviations have been made from time to time, and it is said that "even so circumscribed a legal concept as appealable finality has a penumbral area."

It is worthy of consideration that since this court regards the Constitutional right of freedom of religion as so vital to the basic integrity of our form of government that no City ordinance may place prior restraints thereon which would in practice preclude an itinerant minister[16] from pursuing his calling and exercising that right, it would not be consonant with this concept to permit a rule of convenience set up to avoid situations which might be most difficult to solve, becoming prior restraint upon the protection of so sacred a right.

Obviously, a rule which would compel an itinerant minister or a tiny religious organization, such as the State Court's opinion herein shows the Gospel Army to be to pursue two and possibly more appeals to have his or its right again recognized, must, in effect, amount to a total denial of any remedy for the violation of the right—the continuance of which violation the high court's decree has made immediately effective.

For the foregoing reasons appellant prays that this appeal be docketed and appellees' motions be denied.

Respectfully submitted,

ROBERT H. WALLIS,
Attorney for Appellant.

[16] *Cantwell v. Connecticut.*

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1946.

No. 103

THE GOSPEL ARMY, a corporation,
Appellant,

vs.

THE CITY OF LOS ANGELES, BOARD OF SOCIAL SERVICE COMMISSIONERS, DEPARTMENT OF SOCIAL SERVICE, and DAN O. HOYE, City Controller,
Appellees.

Opening Brief, Statement of Jurisdictional Grounds and Errors to Be Urged.

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SUBJECT INDEX

PAGE

Opinion below 1

Grounds on which jurisdiction of this court is invoked 1

Concise statement of the case 4

The issues as viewed and contested by the parties on appeal 16

The scope of the issues as passed upon by the Supreme Court 19

Errors intended to be urged 23

Summary of argument 40

Argument 42

I.

The instant ordinance constitutes a general scheme and plan. Its provisions are not separable 42

II.

The State Supreme Court erred in holding a law is valid which classifies as charitable and non-religious all solicitations by religious organizations which are not solely for religious purposes 48

III.

If it be held that the dispensation of charity by a religious organization is an integral part of its religion and that solicitations for that purpose by its solicitors are within the protection of the constitutional guarantee of freedom of religion the ordinance involved is null and void 56

PAGE

IV.

Even if it were held that the solicitations last named can be legally classed by law as secular and regulated as lawful enterprises said ordinance is null and void 59

Provisions violative of the guarantee of due process because of lack of adequate standards 64

Provisions which infringe the equal protection of the Laws Clause of the Fourteenth Amendment 67

V.

The ordinance is void because it violates the inhibition of the Fourteenth Amendment against taking property without due process of law 70

Conclusion 74

Appendix:

Exhibit "A." Excerpts from Los Angeles Municipal Code, Ordinance No. 77,000 ..... App. p. 1

TABLE OF AUTHORITIES CITED.

CASES.	PAGE
Cantwell v. Connecticut, 310 U. S. 296	18, 53, 56, 58
Dart, In re, 172 Cal. 47	18, 19, 42, 44, 49, 50, 51, 56, 71, 74, 75
Dickey, Ex parte, 144 Cal. 234	59
Fuller, In re, 15 Cal. (2d) 425	59
Gospel Army Appeal, p. 16	35
Holden v. Hardy, 169 U. S. 366	59
McDonough v. Goodcell, 13 Cal. (2d) 741	59
McKay Jewelers, Inc. v. Bowron, 19 Cal. (2d) 595	59
Morgan v. United States, 304 U. S. 1	59, 66
Murdock v. Pennsylvania, 319 U. S. 104	18, 53, 54, 57, 58, 67
Panama Ref. Co. v. Ryan, 293 U. S. 388, 79 L. Ed. 449	59, 66, 74
Schecter v. United States, 295 U. S. 494, 79 L. Ed. 1570	59, 66, 74
Schneider v. Irvington, 308 U. S. 147	19
Skalko v. City of Sunnyvale, 14 Cal. (2d) 213	59
Washington v. Roberge, 278 U. S. 116	59
Yick Wo v. Hopkins, 118 U. S. 356	59

STATUTES.

Judicial Code, Sec. 237(a) (28 U. S. C. A., Sec. 344(a), and (b), 8 F. C. A., Title 28, Sec. 344(a))	3
Los Angeles Municipal Code—Ordinance No. 77,000:	
Section 12	4
Section 24.01	1, 11, 15, 16, 21, 39, 70, 72
Section 44.01	10, 17, 37, 45, 47, 61, 67
Sections 44.01 to 44.19, incl.	1, 20
Section 44.02	7, 20, 24, 25, 47
Section 44.03	7, 8, 20, 25, 26, 38, 44, 45, 47, 57, 60, 62, 65, 66, 68, 69
Section 44.04	20

PAGE

Section 44.05 ..... 5, 15, 20, 27, 29, 38, 39, 45, 46, 47, 56, 57, 60, 67
Section 44.06 ..... 6, 15, 20, 21, 29, 38, 39, 45, 47, 66, 67, 69
Section 44.07 ..... 46, 47
Section 44.08 ..... 7, 20, 45, 46, 47
Section 44.09 47
Section 44.10 ..... 20, 46, 47
Section 44.11 ..... 20, 46, 47
Section 44.12 ..... 8, 20, 30, 38, 44, 45, 46, 47, 62
Section 44.13 ..... 20, 45
Section 44.14 ..... 9, 31, 40, 46, 65
Section 44.15 ..... 8, 20, 31, 46, 62
Section 44.16 ..... 9, 21, 32, 33, 44, 47, 69
Section 44.17 47
Section 44.18 ..... 17, 47
Section 44.19 ..... 10, 16, 20, 34, 36, 37, 47, 64, 69
Section 402 20
Section 403 20
Section 405 ..... 20, 47
Section 406 20
Section 412 20
Section 415 20
Section 416 20

Los Angeles Municipal Code—Amendment enacted January 21, 1943, Sec. 1 14

Rules on Appeal, Rule 27 23

United States Constitution, First Amendment 15, 16

United States Constitution, Fourteenth Amendment 2, 15, 16, 23, 25, 32, 33, 37, 38, 39, 40, 41, 49

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Appellees.

APPELLANT'S OPENING BRIEF.

Opinion Below.

The Opinion of the State Court of Last Resort is reported in 28 Cal. (2d) 232.

Grounds on Which Jurisdiction of This Court Is Invoked.

The case involves the validity of an Ordinance No. 77,000, entitled "Charities and Relief," incorporated in the Municipal Code of the City of Los Angeles as Sections 44.01 to 44.19, inclusive, and 24.01 thereof against plain-

tiff's challenge that the same violate all guarantees of the 14th Amendment to the Federal Constitution.

The State Supreme Court upheld the constitutionality of the ordinance as against appellant's claims to the contrary, which claims were: That certain provisions of the ordinance on their face and as applied to appellant deprive appellant of property without due process of law and are unreasonable, arbitrary and unduly burdensome; that other provisions are arbitrarily discriminatory and deny appellant, and all others similarly situated, the equal protection of said law, in violation of said 14th amendment to the Federal Constitution; that the ordinance violates the First and Fourteenth Amendments to said constitution, in that it creates and constitutes prohibited prior restraints upon the exercise of the right of freedom of religion; that said ordinance unreasonably and arbitrarily classifies the religious activity of soliciting donations of money and goods by religious organizations for their religious activities, as charitable and not religious if any portion thereof is to be dispensed as charity, and it arbitrarily and unreasonably classifies as a promoter any solicitor for a religious organization who receives any compensation for his services and subjects him to many onerous, time-consuming burdens, such as paying a heavy license fee and posting a bond in the sum of $2000.00, not required of other solicitors, thus infringing the rights of freedom of religions, the equal protection of the laws and takes property without due process of law; that said ordinance penalizes all violations of its provisions and thus violates the rights of personal liberty and religious freedom;

That it delegates to administrative officers the power to arbitrarily refuse to grant a permit or license to solicit to

any applicant; and delegates to such officers arbitrary power to endorse and thereby exempt charitable organizations and their solicitors from all of many burdensome, time-consuming requirements of the Ordinance to which appellant and other similar organizations and their solicitors are subjected; that as to such delegations of power and several others of like import no standard is provided to govern such administrative officers in making determinations, and are thus violative of the due process and equal protection of the law clauses of said 14th amendment;

That said Ordinance is, and many of its provisions are, unreasonable, unnecessarily burdensome, even if solicitation for charity could be classed as secular, and thus violative of said due process clause;

That the decision of said State Supreme Court erred in holding that none of the foregoing, and other similar contentions of appellant possess any merit, and appellant, in its petition for rehearing, appellant claimed and now asserts that in so holding the decision of said State Court itself has denied to appellant the equal protection of the laws, the right to exercise religious freedom and the right to acquire, possess and dispose of property as guaranteed by the 14th Amendment to the Constitution of the United States.

Thus, jurisdiction is sustained by Sec. 237(a) of the Judicial Code, 28 U. S. C. A. Sec. 344(a) and (b), 8 F. C. A. Title 28, Sec. 344(a).

Concise Statement of the Case.[1]

Appellant is a religious organization which maintains a mission where religious services are conducted; it distributes religious tracts and the New Testament free to the public; gives aid to the needy; collects salvage and money from the public as funds to carry on said activities, and some of the salvage is sold in its second-hand stores, and the money received pays overhead expenses, including compensation to the manager and solicitors, and the rest goes to the plaintiff's treasury. [T. R. p. 79.] Solicitors of money exhibit a printed card saying that the bearer is authorized by plaintiffs to solicit money, food and clothing, etc., to aid the Gospel Army to carry on its religious mission and evangelical work among the under-privileged. After expenses of solicitation are paid about fifty per cent remains and is used for said purposes. [T. R. p. 80.]

The Ordinance of the City of Los Angeles purporting to regulate "Charities and Relief", above identified, provides the legal subject matter of this case. Eliminating provisions of lesser consequence as respects the issue involved herein, in the interest of conciseness, the following appear essential to the consideration of the questions presented:

Section 12 of the Ordinance involved reads:

> "No person shall solicit any contributions unless he exhibits an Information Card provided for in Sec. 44.03 of this Article and reads it to the person

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[1]For brevity, abbreviations will be used, as follows: "T. R." means "Transcript of Record"; "App." refers to the "Appendix, Exhibit A," attached hereto, and "S. J." to "Statement of Jurisdiction"; "The Ordinance," means the "Charities and Relief Ordinance," involved herein, and "Section" refers to a section of the Ordinance.

solicited or presents it to said person for his perusal, allowing him sufficient opportunity to read same, before accepting any contribution so solicited." [App. p. 10.]

Section 44.05 provides the procedure for securing the Information Card. (Permit.) It provides:

"No person shall solicit, nor shall any officers or member of any association authorize any person to solicit, any contribution for any charitable purpose unless, within the fiscal year of the City in which such solicitation is made and at least ten (10) days prior to the beginning of such solicitation, there shall have been filed with the Department, on a form furnished by said Department, by such person or association upon whose behalf the solicitation is made, written Notice of Intention to solicit such contribution, which notice shall contain complete information as follows:

"(a) The purpose of the solicitation and use of the contribution to be solicited;

"(b) A specific statement, supported by reasons and, if available, figures, showing the need for the contribution proposed to be solicited;

"(c) The character of such solicitation and how it will be made or conducted;

"(d) The expenses of the solicitation, including salaries and other items, if any, regardless or from what funds such expenses are payable;

"(e) What portion of the contributions collected as a result of the solicitation will remain available for application to the specific purposes declared in the Notice of Intention as the object of the solicitation;

"(f) A specific statement of all contributions collected or received by such person or association with-

in the calendar year immediately preceding the filing of such Notice of Intention. The expenditures or use made of such contributions, together with the names and addresses of all persons or associations receiving salaries, wages, compensation, commissions or emoluments from such contributions, and the respective amounts thereof;

"(g) The names and addresses of the officers and directors of any such association for which the solicitation is proposed to be made;

"(h) A copy of the resolution, if any, of any such association authorizing such solicitation, certified to as a true copy of the original of such resolution by the officer of such association having charge of the records thereof;

"(i) A statement that the signers of such Notice have read and are familiar with the provisions of this Article and will require all solicitors engaged in such solicitation to read and be familiar with all sections of this Article prior to making any such solicitation." [App. pp. 5-7.]

Section 44.06 authorizes further preliminary procedure in securing permission to solicit. It provides: that the "Board of Social Service Commissioners" of said city, may, if "in its opinion" the "Notice of Intention does not disclose sufficient information for the public concerning the facts hereinbefore required" concerning "The person or association" making such solicitation or for whom it is made, "then, upon the request of said Department, there shall be filed, in writing", within 48 hours after said request, such additional information as said Board requires thereon, and "if requested" the "Notice of Intention and additional information shall be signed by the association as well as the application for permit." [App. p. 7.]

Of similar import is a provision of Section 44.03. It authorizes "the Department" to "investigate the allegations of Notice of Intention, or any statement or report"; to "have access to and inspect and make copies of all books, records," etc. of the applicant for permit or those for whom the solicitation is to be made, and to require such additional information as "in the opinion of the Board" shall "be of assistance to the public to determine the nature and worthiness of the purpose for which solicitation is made," and the same section requires that solicitors must have the written authorization of the organization for whom they solicit. [App. pp. 4, 5.]

Section 44.08 limits the use of the Information Card as follows:

> "No person shall solicit any contribution for or on behalf of any charitable association unless such association is maintaining a system of accounting whereby all donations to it and all disbursements made by it are entered upon the books or records of its treasurer or other financial officer." [App. p. 8.]

Another section, 44.02, empowers the Board to "publish the results of any investigation which the Department of Social Service may have made relative to the application for permit to solicit and information acquired from an inspection of the books of the person or association on whose behalf solicitation is made," and to give "such publicity to any such results by such means as may be deemed best to reach the general public and persons interested." [App. pp. 3, 4.]

Section 44.03 authorizes "the Department" to issue to all solicitors Information Cards which cards shall show:

"(1) That same is issued as information for the public and is not an endorsement;

"(2) The Board may, pursuant to Ordinance No. 34982, omit above provision and state that they endorse such charitable association;

"(3) The pertinent facts set forth in Notice of Intention required under Section 44.05 of this Article;

"(4) Any additional information obtained as shall in the opinion of the Board be of assistance to the public to determine the nature and worthiness of the purpose for which the solicitation is made; * * *"

Other sections regulate the use of the Information Card and the method of solicitation. Section 44.12 directs that the solicitor exhibit to the prospective donee the Information Card and "allow him sufficient opportunity to read same" or read it to him, "before accepting any contribution solicited."

Section 44.15 compels the solicitor to tender to each donor a written receipt signed by the solicitor "which contains in addition to a description of the amount and kind of the contribution, substantially the following matters:

"(a) The name of the association, if any, in whose name or upon whose behalf the solicitation is made.

"(b) A statement as to whether the contribution solicited is to be applied for the general purposes of such association, if any, or for specific purposes, and if for specific purposes the nature thereof shall be clearly stated.

"(c) A statement that the Information Card, issued by the Department, was presented to the person

making the contribution for his perusal prior to receipt by the solicitor of the contribution receipted for." [App. pp. 4, 5.]

Section 44.16 segregates solicitations "solely" for religious, evangelical or missionary purposes from all others which are classed as charitable. To be exempted from the foregoing provision and all others of the ordinance relative to solicitors and solicitations from the public it is provided in Section 44.16 of the ordinance that such solicitations must be "made solely for evangelical, missionary or religious purposes." [App. p. 12.]

Section 44.16 reads:

"The provisions of this Article, except Sections 44.01 and 44.04, shall not be applicable to any solicitations made upon the premises owned or occupied by the Association upon whose behalf such solicitation is made . . . nor shall they be applicable to solicitations made solely for evangelical, missionary or religious purposes." [App. p. 12.]

Solicitors have certain duties while soliciting. (Section 44.14.)

"Every person soliciting any contribution for any charitable purpose must file with the Department within 30 days after the close of any such solicitation or within 30 days after a demand therefor by the Department a report to the Department, stating the contributions secured from or as a result of any such solicitation, and in detail all expenses of or connected with such solicitation, and showing exactly for what uses and in what manner all such contributions were or are to be disbursed or distributed. Every such report shall be made on forms to be furnished by the

Department, and signed by the persons or association filing or obligated to file the Notice of Intention and such report, if made by any such association, shall be signed by at least two officers thereof. Provided, that when any such solicitation is made by any such association such report need be filed only by such association and not by an individual solicitor engaged in any such solicitation." [App. p. 10.]

The foregoing provisions deal with one class of solicitors only as described by the ordinance.

Section 44.01 of the ordinance classifies solicitors as "solicitors" and "promoters", the distinction being that promoters are and solicitors are not paid. [App. p. 2.]

Under Section 44.19, promoters must be licensed, pay a license fee of $25.00 and post a bond of $2000.00. To secure a license the promoter must apply in writing for a license and set forth in addition to such information as may be required by the Board. [App. pp. 13, 14.]

"(a) The name and address of the applicant, and if such applicant be a corporation, the name and address of each of its managing officers and agents, and, if it be an unincorporated association, firm or partnership, the name and address of each member of such unincorporated association, firm or partnership;

"(b) A succinct statement of facts showing that the applicant, if not a corporation or an unincorporated firm, association or partnership, is of good character and reputation, or if the applicant be a corporation that each of its managing officers and agents is of good character and reputation, or if the applicant be an unincorporated association, firm or partnership, that each of its members is of good character and reputation.

"(c) The general plan, character and method in or by which applicant proposes to conduct its or his business as a promoter." [App. pp. 13, 14.]

(5) Investigation:

"The Board shall examine such application and shall make such further investigation of the applicant and its, or his, affairs as the board shall deem advisable. If from such examination the Board shall be satisfied: (a) That the applicant is of good character and reputation, or that every managing officer or agent of the applicant if the applicant is a corporation, is of good character and reputation . . . . (b) That applicant has sufficient financial responsibility to carry out the obligations incident to any solicitations, such applicant may make with the City of Los Angeles as such promoter and that all of the statements made in such application are and each of them is true . . . and that the applicant intends to conduct its business fairly and honestly, the Board shall issue to the applicant a license to solicit as a promoter within the City of Los Angeles, contributions." [App. pp. 16, 17.]

Section 24.01, containing Second-hand and Junk Dealers regulations in substance[2] provides as follows:

"Section 24.01 of the Los Angeles Municipal Code defines a 'junk dealer' as 'a person having a fixed place of business in this City who goes from house to house or from place to place, gathering, collecting, buying, selling or otherwise dealing in any old rags,

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[2]This summary of the provisions of Section 24.01 is taken from the State Supreme Court's opinion and represents its construction of such provisions, which it held valid and constitutional. [T. R. pp. 80, 81.]

sacks, bottles, cans, paper, metal or other articles commonly known as junk'. A 'secondhand dealer' is 'a person engaging in, conducting, managing, or carrying on the business of buying, selling or otherwise dealing in secondhand goods, wares or merchandise.' Junk dealers and secondhand dealers must obtain a permit to engage in business from defendant City's Board of Police Commissioners. The following 'Requisites of Permits' are set forth in subsection (c) of Section 24.01,' (1) Persons desiring to obtain a permit to conduct, manage or deal in any business mentioned in subsectio n(a) of this Section *Section* shall file an application in writing with the Board specifying by street and number the place where such business is proposed to be conducted or carried on; junk collectors having no fixed place of business shall specify in such application their residence by street number. The application shall be signed by the applicant and shall contain his residence address. (2) Before receiving an application for any permit the Board shall require the payment of such fees as are hereafter specified. (3) Upon receipt of such application the Board shall cause to be investigated the business of the applicant and location at which applicant proposes to engage in business as specified in said application. Thereafter the Board may issue a permit to the applicant which shall be effective for the remaining portion of the current year. (4) Persons operating under the provisions of this Section shall be required to secure an annual renewal of such permit commencing January 1st of the succeeding year in

which such permit was granted * * * The fees prescribed are set forth in subsection (d): '(1) Applications for permits other than provided for in this subsection shall pay the sum provided in Section 22.10; (2) Applications for special permits, the sum of $50.00; (3) Applications for annual permit renewal, the sum of $25.00; * * *. Subsection (e) provides: "(1) The Board shall not grant any permit provided for in this Section to persons who fail, refuse or neglect to comply with the laws and ordinances relating to and regulating the business for which such permit is sought * * *. No permit shall be granted to any person to conduct, manage, carry on or deal in any business mentioned in subsection 'a' of this Section whose permit has been revoked by the Board until six (6) months have elapsed after such revocation.' Holders of permits must keep a complete record of all goods purchased or received by them, which is open to inspection by any member of the police department. They must also file with the Chief of Police daily reports on prescribed forms of the goods purchased or received during the preceding day, describing the article and specifying the hour of the day when it was acquired, the name and address of the party from whom it was acquired, the height, age, sex, complexion, and other characteristics of that person. The hours of business are prescribed. Secondhand dealers must keep the arti es received by them 21 days before selling them. The period prescribed for junk dealers is 3 days * * *" [App. pp. 19-25.]

Section 1, of an amendment enacted January 21, 1943, regulates the hours during which the businesses defined in subsection (a) which has been quoted, which regulation excludes certain holidays and generally the hours "between 8:00 o'clock p. m. Saturday and 8:00 o'clock a. m. the following Monday." [App, p. 26.]

The case was tried in the State Superior Court on the amended complaint which alleged that the plaintiff Rescue Army was engaged exclusively in promulgation of its religious beliefs by literature and word of mouth, and in procuring donations of money and articles of value in furtherance of its religious activities; that the defendants, appellees herein, have threatened and are threatening criminal prosecutions against the plaintiff unless it complies with the provisions of said Charities and Relief Ordinance of the City of Los Angeles, and that if plaintiff is required to obtain a permit and pay for a license to solicit donations to be used in the furtherance of its religious activities, it will amount to prior restraint on the exercise of religious activities and infringe its right of freedom of religion under the First and Fourteenth Amendments to the Federal Constitution; and that unless defendants are enjoined from carrying out such threats, plaintiff's said rights will be infringed and it will suffer irreparable injury. [T. R. pp. 1-3.]

The answer in effect denies that plaintiff's activities are religious as a matter of law, and avers that before plaintiff can continue its activities it must secure a permit from the Department of Social Service of the defendant city

and that plaintiff and its officers and employees must comply with Sections 44.05 and 44.06 of said ordinance and all sections thereof, including Section 24.01 thereof and that defendants have so notified plaintiff. [T. R. pp. 4-6.]

The trial court found that plaintiff is engaged exclusively in promulgation of its religious beliefs and in procuring donations as alleged in furtherance of its religious activities; that defendants have notified plaintiff that it is subject to the rules, regulations and laws of defendants pertaining to charities and relief and to continue such religious activities must apply for and receive a permit from said Board; and that said Board has full power under said Ordinance to pass on and reject all such applications and that defendant Hoye has demanded that plaintiff pay said city for a license to operate plaintiff's store where donated articles are sold and the proceeds are used in furtherance of said religion and defendants have and are threatening plaintiff with criminal prosecutions for alleged violations of said Ordinance. [T. R. p. 9.] Said court found that if plaintiff is required to obtain a permit and pay for a license to solicit and receive donations in furtherance of said religious activities, it will amount to a prior restraint on the exercise of such activities and an infringement "upon the free exercise of their religious liberty" under the First and Fourteenth Amendments to the Federal Constitution and that plaintiff will suffer irreparable injury therefrom, and issued its injunction against defendants accordingly. [T. R. pp. 10, 11.]

The Issues as Viewed and Contested by the Parties on Appeal.

Thereupon defendants duly appealed to the State Supreme Court from said judgment. [T. R. p. 13.]

In defendants' briefs on appeal, it was claimed that all of the provisions of said Ordinance, including said Section 24.01, are binding on plaintiff and its employees and that no provision thereof violates the First or Fourteenth Amendment to the Federal Constitution; that the City's Board of Police Commissioners has jurisdiction over plaintiff's store, and that upon the facts found by the trial court, the judgment is erroneous because the ordinance involved is "merely regulatory" and constitutes a "registration system." (S. J. pp. 24, 25.)

This contention was applied to all sections of said Ordinance except Section 24.01 and it was claimed that plaintiff's secondhand store is purely a business and not a religious activity. (S. J. p. 25.)

Defendants' said closing brief contends that the "fee" required of applicants for Information Cards by Section 44.03 and for the promoters license (Sec. 44.19), are not for revenue but merely for regulation, and claims that where charitable solicitations contemplate "payment of a percentage or commission to its (the organization's) agents," as is done by plaintiff, prohibited prior restraints upon the exercise of religious liberty are valid and necessary to protect the public "from fraudulent solicitations for charitable or religious purposes." (S. J. p. 32).

The Gospel Army, in its brief attacks, as violative of the right of freedom of religion, and unwarranted prior restraints upon its exercise, all of the sections of the ordinance which defendants' brief especially classes as "regu-

latory" and creating a registration system, to-wit, provisions for the Notice of Intention, the issuance of Information Cards, for investigation by the Board and the Department, receipts to be given by solicitors, rendering reports and keeping and filing accounts, fees for permission to solicit and filing of bonds (S. J. p. 28.)

It assails as a denial of the equal protection of the laws and unreasonable discrimination, the definition of the term "promoter" in Section 44.01 of said ordinance and provisions of Section 44.18 which imposes upon promoter-solicitors far greater burdens and restraints than are elsewhere placed upon ordinary "solicitors," some of which are that the promoter-solicitor must apply for a license, pay a $25.00 license fee, post a $2,000.00 bond, hold the license subject to the condition that it may be revoked at any time if the "Board finds that any act or omission of the promoter or his agents" in soliciting has been unfair, unjust, inequitable or fraudulent." (S. J. p. 28.)

It points out that said section 44.18 violates the same constitutional guarantees by providing

> "that no person who is a *bona fide* paid officer or employee of a social service agency endorsed by the Board of Social Service Commissioners, shall be considered a promoter within the meaning of this Article." (S. J. pp. 28, 29.)

It argues that plaintiff's property rights are involved in this case; that its property right in its store are vio-

lated by the provisions of the Ordinance as applied thereto in contravention of said Fourteenth Amendment and by reason of prohibitive restraints upon solicitations for donations, relying on *In re Darte*, 172 Cal. 47; *Murdock v. Pennsylvania*, 319 U. S. 104, and *Cantwell v. Connecticut*, 310 U. S. 296. (S. J. pp. 28-30.)

Plaintiff's brief argues from the reporter's transcript that

> " . . . from the 'testimony of the defendants' witnesses it appears that the defendants classed Mrs. Colbert, who conducts said store for plaintiff, as a 'promoter' and demanded that a promoter's license be secured for her; the posting of a $2,000 security bond for or by her and a license fee of $25.00 be paid; that defendants, through their officers, had asserted that 'the Board claims the right to refuse' to issue a license to a promoter and to refuse an Information Card to a solicitor after a Notice of Intention is filed." (S. J. p. 30.)

It thus appears that the parties treated the case as involving the validity of the entire city ordinance, and in the opinions of the State Supreme Court the same view is taken.

The Scope of the Issues as Passed Upon by the Supreme Court.

The majority opinion is by Justice Traynor. Justice Carter wrote a dissent, concurred in by Justice Schauer and Justice Edmonds wrote a separate dissenting opinion.

The majority opinion holds that charitable activities of a religious organization may be severed by law from the evangelical and missionary activities of a religious organization even though their integration is such that the former are in furtherance of the latter. [T. R. pp. 65-70.]

Justice Carter, dissenting, states "that freedom of religion cannot be whittled away by carving out segments of religious activities and relegating them into the realm of secular affairs" and that the utter impossibility of any severance is made plain in the application of Dart, 172 Cal., 57. [T. R. p. 106.]

Justice Edmonds in dissenting also relies on the *Dart* decision and insists that the Constitutional guarantee "gives as much, if not greater protection to religious endeavors which include ministrations to human suffering" than to those which do not [T. R. p. 131.]

The majority opinion holds that such segregation is made by the ordinance involved and is warranted by the need for protection of the public against fraudulent solicitations for purported charitable purposes. [T. R. p. 66.]

Justice Carter quotes *Schneider v. Irvington*, 308 U. S. 147, to the effect that frauds may be denounced and punished as offenses against the law and the need for their prevention does not empower a municipality to abridge freedom of speech or of the press, and he asserts that the same is true of religious freedom. [T. R. p. 103.]

Having determined that such segregation by the Ordinance involved is constitutional, the opinion, in considering attacks by appellant herein on its validity as an entirety and its separate sections regards them as regulations of secular business enterprises. So evaluated are Sections 44.01 to 44.19, inclusive, and the opinion holds that "nothing unduly burdensome or unreasonable in any of these provisions" is found. [T. R. p. 56.]

After analyzing and denouncing as unreasonable and delegations of arbitrary power provisions in the sections regulating solicitations: 403, 416, 412, 406, 402, 405 and 415 Justice Edmonds asserts that "if the practice of religion may be legally isolated beyond the contaminating reach of charity" the legislation he had discussed imposes "unnecessary and unreasonable restrictions upon the use of property or the pursuit of useful activities." [T. R. p. 131.]

Justice Carter declares that if the author of the majority opinion had discussed in detail the separate sections it is doubtful that he would say "that none is unduly onerous. [T. R. p. 109.] He then analyzes Sections 44.05, 44.06, 44.03, 44.02, 44.04, 44.08, 44.10, 44.11, 44.12, 44.13 and 44.15 and declares that as "a group" a procedure so complex and so costly in time and effort will, so far as many solicitors are concerned, be prohibitive, and he says: obviously, they do unreasonably obstruct and delay the collection of funds. [T. R. pp. 110-112.]

He states that the provisions of the Ordinance are "still more restrictive" as to "so-called promoters." Referring to Section 44.19, the promoter section, Justice Carter says:

> "The comment which has been made concerning the unreasonableness of the ordinance provisions re-

lating to solicitors applies with double force as to promoters.'" [T. R. pp. 112-115.]

The majority opinion asserts broadly concerning all sections of the ordinance, except Sec. 24.01:

"The classifications effected by the ordinance and the standards provided are adequate." [T. R. pp. 59-60.]

Justice Edmonds, dissenting, concludes that the provisions of Section 44.16 delegates arbitrary power to the Board in the matter of giving such publicity as it "may deem best" to solicitations in whole or in part charitable on behalf of a religious organization, as to facts derived from its own investigation. [T. R. p. 127.]

He states that the terms of the ordinance relating to the issuance of a permit are indefinite [T. R. p. 128]; that a provision in Section 44.06 similar to that in Section 44.16, above mentioned "gives opportunity for undermining public confidence and provides a vehicle for official propaganda which may do irreparable damage to the solicition purely religious." [T. R. p. 129.]

He concludes that no standards or limitation is provided for the data to be printed upon the Information Card and the Board may arbitrarily disapprove of a worthy charity. [T. R. p. 133.]

The majority opinion holds that the provisions of Section 24.01 regulating Secondhand stores and Junk Dealers are valid "for the reasons set forth below with respect to the validity of the regulation of plaintiff's solicitation of funds for charity, and the court asserts that such provisions" are reasonable, and the standards prescribed are adequate. [T. R. p. 83.]

Justice Edmonds, in dissenting, states that the Board has power under the wording of the ordinance to "grant or withhold official favor for any reason which whim or fancy may dictate." He says no qualifications are specified as a standard to guide it, and he declares that the ordinance is an unlawful interference with plaintiff's right of property which, if not enjoined, will cause irreparable injury. [T. R. pp. 135-136.]

The majority opinion states that Information Cards are issued automatically upon the filing of the required information by the applicant and payment of four cents for each card, and "the department is given no authority to withhold such cards when these requirements were met." [T. R. p. 85.]

Justice Edmonds declares:

> "There is neither requirement nor even suggestion in the Ordinance to support the above statement" [T. R. p. 128.]

Concerning Section 44.01, containing the provisions concerning "promoters" the court holds that the classifications effected therein and the standards are adequate. [T. R. p 87] It decides that the Board has no discretion to withhold a promoter's license if the applicant's good character and reputation and financial responsibility are established and the required bond is filed [T. R. p. 85], and that the requirement that the board revoke a license in case of unfair, unjust, inequitable or fraudulent practices of solicitation is not vague or uncertain. [T. R. p. 97.]

Justice Carter states that the last named provision, except the ground that practices have been "fraudulent" are

vague, uncertain, and may well result in religious censorship. [T. R. p. 120.]

Justice Edmonds regards both of the provisions approved by the majority opinion as "far beyond the permissible bounds fixed for regulation of a religious purpose." [T. R. p. 134.]

The majority opinion holds that although empowered to favor some applicants for a permit to solicit and discriminate against others, it may be assumed that the Board will not whimsically or capriciously deny an application. [T. R. p. 86.]

Justice Edmonds points out that

> "This same argument was advanced by the State in Cantwell v. Connecticut, *supra*, and summarily "rejected." [T. R. p. 128.]

Errors Intended to be Urged.

It is appellant's intention to urge each of the errors set forth in the "Transcript of Record." However, being uncertain as to whether this statement, alone, complies with Rule 27, said assignment, abbreviated where possible, is repeated.

The California Supreme Court in its opinion, decision and judgment in this case, held concerning the validity of the Ordinance involved or sections thereof as hereinafter stated, and thereby erred and violated guarantees of the 14th Amendment to the Federal Constitution, as follows:

I.

The Court erred in holding that said ordinance does not unreasonably, arbitrarily and unlawfully violate the equal protection of the laws clause of the Fourteenth

Amendment to the Constitution of the United States as applied to said Gospel Army, and to one of its solicitors, Mrs. Colbert, and to all religious organizations and solicitors situated similarly to said to said last-named parties, by its definition of the term "promoter" and by arbitrarily creating a class of solicitors designated as "promoters" and by exacting from such promoters higher fees for permits or licenses than are required of other solicitors, and by requiring the execution of a prohibitively high indemnity bond by them whereas no bond is required of other solicitors, although there is no reasonable, logical or substantial basis for such distinctions.

II.

The said Court erred in holding that said ordinance requires the Department of Social Service to issue the permit or Information Card, which all solicitors must have before soliciting donations for charities, upon the filing of the information required by said Department and the payment of 4¢ for each card, although no provision of said ordinance directs that this be done.

III.

The said Court erred in holding that the provisions of Section 44.02 of the said ordinance which authorize said Board to "recall every such Information Card and amend or correct the same" and to require the person who files it, or association on whose behalf the Notice of Intention was filed, to return and present the recalled Information Card within 48 hours after receiving notice to return it, are reasonable and valid and not burdensome, and said Supreme Court erred in failing and refusing to hold that said provisions are unreasonably time-consuming and burdensome and infringe the rights of solicitors

and associations on whose behalf solicitations are made to the exercise of the right of freedom of religion, and the right to engage in charitable activities, as guaranteed by the Fourteenth Amendment to the Federal Constitution.

IV.

The said Court erred in holding that Section 44.02 is reasonable, not burdensome and valid in empowering the Board to publish the results of investigations by the Department pertaining to applications for permits to solicit and the allegations of "Notice of Intention" and to give publicity to any such results by such means as may be deemed best to reach the general public, and persons interested, and said opinion, decision and judgment erred in failing and refusing to hold that said provisions permit unreasonable delays and constitute prohibitive burdens upon the exercise of religious and charitable activities and the freedom of religion, in contravention of the due process clause of the Federal Constitution.

V.

The said Court erred in holding valid and constitutional the provision in Section 44.03 of said ordinance which provides that in issuing an Information Card (permit to solicit) said Department has power to show in said card that such issuance is "not an endorsement" or to state that "they endorse such charitable association," and said Court erred in failing and refusing to hold that said provision is a nullity in that it delegates to the Department power to endorse or refuse to endorse, arbitrarily and capriciously, since no reasonable standard is provided to guide its decision and thus that it violates the due

process clause of the Federal Constitution; and to hold that said enactment creates two classes of permits and charitable associations, the endorsed and the unendorsed, and arbitrarily and unreasonably denies to the latter privileges and protection which it grants to the former, in violation of the equal protection of the laws clause of the Fourteenth amendment to the Federal Constitution.

VI.

Said Court erred in holding valid and constitutional the provisions in said Section 44.03 thereof, which provides that upon the filing of a Notice of Intention to solicit with said Department, before acting on said petition, said Department is authorized to investigate the allegations of the Notice of Intention, and to "have access to and inspect and make copies of all books, records and papers of such person, by or on whose behalf any solicitation is to be made," and said Supreme Court erred, in failing and refusing to hold that each of said acts so authorized to be done by said Department are unreasonable and constitute arbitrary and onerous limitations upon the right to solicit for charity, and are unlawful prior restraints upon the exercise of the right of freedom of religion, thus contravening the said Fourteenth Amendment.

VII.

Said Court erred in holding valid the provision in said Section 44.03 which authorizes the said Department, in issuing an Information Card, to set forth therein information secured by its independent investigation concerning the applicant; of which he has not been apprised or had opportunity to refute or explain, which "in the opinion of the Board shall be of assistance to the public to determine the nature and worthiness of the purpose for

which the solicitation is made," erred in failing and refusing to hold that said provision violates the due process clause of the Federal Constitution for the following reasons:

It empowers the defendant Board and Department to deprive the applicant of a property right and property without due process of law; it provides no standard by which said Board and said Department shall decide what information will be of assistance to the public to determine the nature or worthiness of the charitable purpose involved; it constitutes an unreasonable and burdensome prior restraint on the exercise of the right to solicit for charity; and that as applied to appellant and its solicitors, and their activities it constitutes a prohibitive prior restraint upon the exercise of the right of freedom of religion.

VIII.

Said Court erred in holding to be valid and not violative of the right of religious freedom or of the right to engage in charitable activities provisions of Section 44.05 of said ordinance, which provide as follows:

> "No person shall solicit, nor shall any officers or member of any association authorize any person to solicit, any contribution for any charitable purpose unless, there shall have been filed with the Department, by such person or association upon whose behalf the solicitation is made, written Notice of Intention to solicit such contribution, which notice shall contain complete information as follows:
>
> "(a) The purpose of the solicitation and use of the contribution to be solicited;
>
> "(b) A specific statement, supported by reasons and, if available, figures, showing the need for the [fol. 234] contribution proposed to be solicited;

"(c) The character of such solicitation and how it will be made or conducted;

"(d) The expenses of the solicitation, including salaries and other items, if any, regardless of from what funds such expenses are payable;

"(e) What portion of the contributions collected as a result of the solicitation will remain available for application to the specific purposes declared in the Notice of Intention as the object of the solicitations;

"(f) A specific statement of all contributions collected or received by such person or association within the calendar year immediately preceding the filing of such Notice of Intention. The expenditures or use made of such contributions, together with the names and addresses of all persons or associations receiving salaries, wages, compensation, commissions or emoluments from such contributions, and the respective amounts thereof;

"(g) The names and addresses of the officers and directors of any such association for which the solicitation is proposed to be made;

"(h) A copy of the resolution, if any, of any such association authorizing such solicitation, certified to as a true copy of the original of such resolution by the officer of such association having charge of the records thereof; [fol. 235]

"(i) A statement that the signers of such Notice have read and are familiar with the provisions of this Article and you will require all solicitors engaged in such solicitation to read and be familiar with all sections of this Article prior to making any such solicitation."

Said Court erred in failing and refusing to hold that each of said provisions, as applied to appellant and its solicitors and their solicitations, is unreasonable, burdensome and a time-consuming previous restraint upon the exercise of the rights above set forth.

IX.

Said Court erred in holding adequate and valid the provision contained in Section 44.06 which empowers said Department to decide that a Notice of Intention "does not disclose sufficient information for the public concerning the facts required by Section 44.05 to be set forth or concerning the person or association making such solicitation or on whose behalf such solicitation is made, and to thereupon require that there be filed within 48 hours "such additional information as said Board may require upon the foregoing subjects," and said Court erred in failing and refusing to hold that said provision is void and violates the Fourteenth Amendment to the Federal Constitution, in that it empowers the Department to act and decide captiously and arbitrarily and unreasonably, and provides no standard to control the decision authorized in said provision.

X.

Said Court erred in holding that the provisions of Section 44.06 of said ordinance are valid and not burdensome, which require that the applicant for permission to solicit "must file with the Notice of Intention, a statement of any agreement made with any agent, solicitor, promoter . . . of such solicitation, together with a copy of each agreement, which may be in writing, and, if a change is made in such agreement, applicant must within twenty-four hours file a true copy of it with the

Department, and must, if requested by the Department, provide any further information which the Board may require, and, if required by the Department, the Notice of Intention and additional information must be signed by the person intending to make such solicitation and by two officers of the association."

Said Court erred in failing and refusing to hold that said provisions are violative of the due process clause of said Fourteenth Amendment, because said provisions each create and constitute a burdensome bar and a prohibited previous restraint upon the exercise of the right of all to freely engage in religious and charitable activities.

XI.

Said Court erred in holding that the provisions of Section 44.12 are reasonable, valid and constitutional and not burdensome, as applied to solicitors for charity alone or for charity in furtherance of religion, which provisions require that solicitors must read the Information Card to any person solicited for donations or present it to such person and "allow him sufficient opportunity to read the same before accepting any contributions so solicited," and in failing and refusing to hold that said provisions are so burdensome as to be prohibitive of solicitations, and are arbitrary and unreasonable prior restraints upon the exercise of the right of freedom of religion, and especially of the exercise of said right by the appellant and all of its solicitors, and of their rights to engage in charitable activities, and to acquire property, thus contravening the Fourteenth Amendment to the Federal Constitution.

XII.

Said Court erred in holding that the provisions of Section 44.14 are not burdensome and are reasonable, valid and constitutional, which provisions require that solicitors file with the Department a report, stating the contributions secured, "in detail all expenses of or connected with such solicitation," "exactly," for what uses and the manner in which all contributions were disbursed, and that the statement be signed by the persons or associations obligated to file the Notice of Intention, and said Court erred in not holding and in refusing to hold that each of said requirements is burdensome and unreasonable and a prior restraint upon the freedom of religion of the Gospel Army and its solicitors and constitutes prohibited prior restraints upon the exercise of their rights of religious freedom and the right to be charitable. [fol. 239]

XIII.

Said Court erred in holding that the provisions in respect to receipts to be given for donations and the contents thereof in Section 44.15 of said ordinance are not burdensome and are reasonable, valid and constitutional, which provisions are:

> "No person shall solicit any contribution for any charitable purpose unless such person shall tender to each person making such contribution a written receipt signed by the solicitor which contains in addition to a description of the amount and kind of the contribution, substantially the following matters:
>
> "(a) The name of the association, if any, in whose name or upon whose behalf the solicitation is made.

"(b) A statement as to whether the contribution solicited is to be applied for the general purposes of such association, if any, or for specific purposes, and if for specific purpose the nature thereof shall be clearly stated.

"(c) A statement that the Information Card, issued by the Department, was presented to the person making the contribution for his perusal prior to receipt by the solicitor of the contribution receipted for."

And said Court erred in failing and refusing to hold that the foregoing provisions do not constitute a prohibitive prior restraint upon the exercise of the right of religious freedom, and upon the exercise of that right and the right to dispense charities by appellant and its solicitors and therefore are violative of the Federal Constitution, amendment fourteen thereof.

XIV.

Said Court erred in holding reasonable, valid and constitutional the provision in Section 44.16 which segregates solicitations for charitable purposes from solicitations for evangelical, missionary or religious purposes and severs from the latter class all solicitations whose purposes are not purely evangelistic, missionary or religious even though they are in furtherance and an integral part of religion and other religious activities, and said Court erred in failing and refusing to hold that said provision is arbitrary, unreasonable and discriminatory, in that it attempts by law to remove activities which in fact are religious from the realm of religion and from the protection of the 14th amendment to the Federal Constitution and its guaranty of freedom of religion.

XV.

Said Court erred in upholding as valid, constitutional and not burdensome or unreasonable the provision of Section 44.16 which authorizes the Board of Social Service Commissioners of said defendant City to investigate the matter of solicitations for solely evangelical, missionary or religious purposes and if "in the opinion of the Board" such solicitation "is calculated to give or may give the impression to the person or persons solicited in any such solicitation or to the public that the purpose of such solicitation is either in whole or in part charitable, then the Board, if in its opinion the public interest will be subserved thereby, shall investigate the matter of such solicitation and give publicity to its finding thereon in such manner as it may deem best to advise the public of the facts of the case."

And said Court erred in failing and refusing to hold that the foregoing provision is not a direct violation of the right of freedom of religion and of its exercise, and that it does not permit and create a prior restraint upon and interference with the exercise, and that it does not arbitrariiy create a prohibited prior restraint upon the exercise of said right and the right of appellant to acquire property, and deny appellant the equal protection of the laws as guaranteed by said 14th Amendment.

XVI.

Said Court erred in holding that said Section 44.16 does not violate the rights of religious freedom and the right of property guaranteed by said 14th amendment, of religious organizations and especially such rights of the appellant and of its solicitors, in that it excludes from the exemption, solicitations of money and goods if any

part thereof is to be applied to charities incident to religious activities or to the compensation and support of the solicitor.

XVII.

Said Court erred in holding that the provision of Section 44.19 which authorizes the Board to require that applicants for license to solicit as promoters furnish "such information as may be required by the Board" is reasonable, not burdensome or vague in its delegation of power and is valid and constitutional, and it erred in failing and refusing to adjudge that said provision constitutes an unreasonable and burdensome prior restraint upon the exercise of the rights of freedom of religion and the right to dispense charity, in contravention of the said 14th amendment and is violative of the due process clause thereof because it gives the Board unrestricted power to make requirements prerequisite to granting a promoter's license of an unreasonable, arbitrary and capricious character, and to deny such licenses if such requirements are not met; and, said Court erred in failing and refusing to hold that the foregoing provisions are harsh, unreasonable, and burdensome as applied to promoter-solicitors for charities and especially as to those who solicit for a religious organization whose charitable activities are in furtherance of the spreading of its religious beliefs and doctrines.

XVIII.

Said Court erred in holding that provisions in Section 44.19(2), (a), (b) and (c) are not burdensome and are reasonable, valid and constitutional, and in failing and refusing to hold that they are unreasonable, unduly burdensome, and violate the due process clause of said 14th

amendment and, as applied to appellant, are a denial of its right to freedom of religion and a bar to the exercise of its right to acquire property, guaranteed by said amendment. Said provisions are:

"No promoter shall in any manner whatsoever, solicit within the City of Los Angeles any contribution for any actual or purported charitable use, purpose, association, corporation or institution without a license from the Board so to do.

"(2) Application. [fol. 245]

"To obtain such license, such promoter shall make and file with the Board an application therefor in writing. In such application, the applicant shall set forth, in addition to such information as may be required by the Board;

"(a) The name and address of the applicant, and if such applicant be a corporation, the name and address of each of its managing officers and agents, and, if it be an unincorporated association, firm or partnership, the name and address of each member of such unincorporated association, firm or partnership;

"(b) A succinct statement of facts showing that the applicant, if not a corporation, or an unincorporated firm, association or partnership, is of good character and reputation, or if the applicant be a corporation that each of its managing officers and agents is of good character and reputation, or if the applicant be an unincorporated association, firm or partnership, that each of its members is of good character and reputation.

"(c) The general plan, character and method in or by which applicant proposes to conduct its or his business as a promoter." (Gospel Army Appeal, p. 16.)

XIX.

Said Supreme Court erred in holding that provisions of Section 44.19 which requires a promoter-solicitor to pay a license fee of $25.00 and post a bond in the sum of $2,000.00, are reasonable, are not burdensome and violate no constitutional guarantee, and in holding that other provisions of said section which authorize the Board to make such investigations of the applicants "affairs" as the Board may "deem advisable" and if from "such examination" the Board is satisfied that the applicant is of good character and "reputation" and has "sufficient financial responsibility to carry out obligations incident to any solicitation such as applicant shall be granted. Otherwise, the Board shall refuse to issue the license," are valid and constitutional and are reasonable and not burdensome, and erred in failing and refusing to hold that said provisions infringe the right of freedom of religion and right to dispense charity, and that said provisions are unreasonable and unduly burdensome, and that said standard for granting of a license is unfair and arbitrary, and in all respects violative of said due process clause of the said 14th Amendment.

XX.

Said Court erred in holding that the provision of Section 44.19(3) which empowers the Board to make such investigation of the applicant and "his affairs" "as they deem advisable" and from such examination to base their determination of his qualifications to be granted a license, is reasonable and not vague in its delegation of powers and standards for their use and it erred in failing and refusing to hold and adjudge that said provision is not violative of due process under the 14th Amendment to the Federal Constitution because it fixes no standard and au-

thorizes said Board to make its decision upon matters wholly irrelevant to the purpose of the inquiry, and to discriminate against some in favor of others, thus violating the equal protection of the laws clause of said Amendment.

XXI.

Said Court erred in holding that the provision in Section 44.01 of said ordinance which states: "No person who is a *bona fide* officer or employee of a social service agency endorsed by the Board of Social Service Commissioners of the City of Los Angeles shall be considered a promoter within the meaning of this article" is a reasonable classification and in holding that it is valid and constitutional, since said provision arbitrarily and unreasonably exempts employees and officers of endorsed agencies from the necessity of securing permits and licenses to solicit; and from all of the burdensome and time-consuming requirements under which other solicitors and promoters are compelled to solicit and said Court erred in holding that said exempting provision is not unreasonably discriminatory and does not deny the equal protection of the laws to charitable and religious organizations not endorsed by said Board and to their solicitors and promoters, in contravention of the 14th Amendment to the Constitution of the United States.

XXII.

The Court erred in holding that the definition of the term "promoter" in Section 44.01 of said ordinance and the provisions contained in Section 44.19 thereof pertaining to promoters, do not create and constitute an arbitrary and unreasonable classification of solicitors, and erred in

holding that the classification thus provided is reasonable and the standards provided are adequate, and further erred in failing and refusing to hold that said definition and classification of promoters as distinguished from other solicitors is arbitrary and unreasonable and denies to promoters and their employees the equal protection of the laws as guaranteed by the 14th amendment to the Federal Constitution.

XXIII.

The Court erred in holding that Sections 44.03, 44.05, 44.06 and 44.12 of said ordinance, collectively and read together, are valid, constitutional and reasonable and are not burdensome as applied to charitable associations and religious organization, and their solicitors and promoters who solicit donations of money and articles of personal property for charitable or religious-charitable purposes, and erred in failing and refusing to hold that said provisions, and all of them together, create a system of procedure which constitutes an unreasonable, burdensome and prohibitive prior restraint upon the exercise by the Gospel Army and its promoter and other solicitors of the rights of religious freedom and the free exercise thereof, and the right to dispense charity and to acquire, possess and dispose of property as guaranteed by the 14th Amendment to the Federal Constitution.

XXIV.

Section 44.06 of said ordinance authorizes said Board to require the application for permission to solicit to file.

in writing, within 48 hours, "additional information" as to the matters enumerated in Section 44.05, "whenever, in the opinion of the Board the 'Notice of Intention' does not disclose sufficient information for the public" concerning such facts.

Said Supreme Court erred in holding that this section does not authorize said Board to protract its investigation without limit and that both sections, 44.05 and 44.06 do not extend the range of investigation unreasonably, and that they do not constitute unlawful prior restraints upon the exercise of freedom of religion in violation of said 14th Amendment, and that as applied to petitioner said sections do not constitute such restraints upon petitioner's said right, and of its constitutional right under the due process clause of the Federal Constitution to be charitable and dispense charity and to acquire property.

XXV.

Said Court erred in holding that the provisions of Section 24.01, regulating second-hand stores and junk dealers, are not unduly burdensome or unreasonable and that the standards therein provided are adequate, and it erred in failing and refusing to adjudge that said provisions are wholly unreasonable as applied to stores conducted by either religious or charitable organizations which sell donated goods only in furtherance of charitable or religious activities of such organizations and that said provisions, as applied to appellant and its solicitor-storekeeper violate the rights of freedom of religion and property

rights in violation of the 14th Amendment to the Federal Constitution.

XXVI.

That the provisions of Section 44.14 which require that the solicitor file a written report stating in detail all expenses of solicitation and for what uses disbursed are excessively burdensome, unreasonable, time-consuming and devoid of standards, and are thus violative of appellant's right to freedom of religion and to be free from unreasonable restraints thereon, and contravene all of its rights guaranteed by the due process clause of the said 14th Amendment, and that said Court erred in failing to so hold and in upholding the constitutionality of said provisions.

Summary of Argument.

The nature of the case and the issues involved having been shown, the argument about to be made will appear from the following statement of appellant's contentions in the order in which they will be presented, which are:

I.

The Instant Ordinance Constitutes a General Scheme and Plan. Its Provisions Are Not Separable.

II.

The State Supreme Court Erred in Holding That a Law Is Valid Which Classifies as Non-Religious All Solicitations by Religious Organizations Which Are Not *Solely* for Religious Purposes.

III.

If It Be Held That the Dispensation of Charity by a Religious Organization Is an Integral Part of Its Religion and That Solicitations for That Purpose by Its Solicitors Are Within the Protection of the Constitutional Guarantee of Freedom of Religion the Ordinance Involved Is Clearly Null and Void.

IV.

Even if It Were Held That the Solicitations Last Named Can Be Legally Classed by Law as Secular and Regulated as Lawful Enterprises, Said Ordinance Is Null and Void.

(a) Certain provisions impose unnecessary and unreasonable restrictions which are unduly burdensome and oppressive, thus violating the 14th Amendment to the Federal Constitution and the due process clause thereof.

(b) Other provisions violate the same clause because of lack of adequate standard in the delegation of powers.

(c) Certain provisions infringe the equal protection of the laws clause of said 14th Amendment.

V.

The Ordinance Is Void Because It Violates the Inhibition of the 14th Amendment Against Taking Property Without Due Process of Law.

ARGUMENT.

I.

The Instant Ordinance Constitutes a General Scheme and Plan. Its Provisions Are Not Separable.

It is the successor to the ordinances condemned as unconstitutional in *In re Dart*, 172 Cal. 47, and represents a studied endeavor to re-enact that law by devious provisions and camouflaged terms.

The Salvation Army was the victim of the former enactment. It engaged in charity, maintained an "Industrial Home," a "maternity Hospital," and nine stores where donated second-hand articles and junk were sold, in addition to its Gospel work.

One ordinance, created a "charities commission" with power to investigate all charities dependent upon solicitations and to "endorse" such of them "as meet actual needs of the community, attain a reasonable standard of efficiency and are so conducted as to insure the public of the wise use of the funds."

A second ordinance prohibited begging on the public streets and required a permit from the commission to solicit alms, etc., exempting, however, "accredited solicitors of established churches" for "purely religious purposes" from this rule;

The permit was to consist of a written certificate from the commission, certifying that the solicitation "is worthy and meritorious," but was revocable by said commission at any time, at its discretion.

Also it was made unlawful for any association to solicit for a religious or charitable purpose without the endorsement of the commission, or to sell solicited goods,

wares, etc., without such permit, revocable at the discretion of said commission.

Dart, an officer of the Army, was arrested for soliciting and for selling without permits.

The commission had made various demands upon the Army as a condition precedent to endorsement; among these were that a local board should administer its affairs and the funds must be expended in Los Angeles, unless permitted by such board or the commission.

Under this ordinance the commission construed the standard for endorsement set up to mean a charity "that will execute every trust for charity with the least possible delay with the greatest possible efficiency and the least possible deduction for expense."

The Court condemned these ordinances as "an attempt to use the police power in an arbitrary, unreasonable and oppressive manner" and as delegating arbitrary power to the commission. It held that the right to solicit for charity is not beggary and while subject to reasonable regulation, the right to better the lot of the poor cannot be prohibited or suppressed or *licensed*.

It further held that charity is an integral part of religion and when dispensed as a "religio-charitable" activity it is within the realm of religion, to be protected as an exercise of the religious liberty guaranteed in the Constitution, even though the efficiency of standards of perfection set up by the charities commission under said ordinances be not met or approximated.

The instant ordinance as construed by the State Supreme Court arbitrarily segregates charities from religion; it calls an application for a permit or license, "a

notice of intention to solicit," and attempts to cover up the inhbition against soliciting without a license by prohibiting such activity without an "Information Card." [Sec. 44.12; App. p. 10.]

The *Dart* opinion said that "power to endorse" means "grant permits to charitable institutions under which alone they are entitled to live," and the power delegated by the instant ordinance "to endorse" [Sec. 44.03; App. p. 4] has precisely the same design and result, for no unendorsed religio-charitable organization can survive under the impediments of the restraints beginning with Section 44.04 to the end of the ordinance.

Like the former ordinance, to escape such restraints the solicitation must be "purely" for religion. [Sec. 44.16; App. p. 12.] Like it, perfection in economy is demanded. If the colporteur or solicitor receives the slightest compensation, he is made a promoter and both he and the religious body for whose cause he solicits are subjected to such prohibitive restraints as the "notice of intention" [Sec. 44.05; App. pp. 5-7] and payment of a license fee and posting of a bond. [Sec. 44.19; App. pp. 13, 14.]

Section 44.12 [App. p. 10] prohibits any solicitation unless the solicitor exhibits an Information Card to the person solicited for his perusal or reads it to him.

This section is the key provision to the entire ordinance. The tentacles of this section reach forward and backward and grasp every other section, even the Second-hand Store regulations, because the woman who conducts it, Mrs. Colbert, is classed by the board as a promoter. [T. R. pp. 82, 83.]

To secure the Information Card, a Notice of Intention must have been filed. [Sec. 44.05; App. p. 5.]

The Notice of Intention must provide information on nine matters, of which the dissenting opinion of Justice Carter states: "But a glance at this section shows that the much maligned income tax forms issued by the Federal Government are no more complex and demanding than is this Notice of Intention in its requirements of itemized data." He has analyzed these requirements and reference is made to such analysis for confirmation of his assertion that such requirements "indicate that its enforcement will doubtless effect the disappearance of all but organized institutions," and he might properly have said, all but *commission endorsed* institutions.

The ramifications of the Notice of Intention reach into data required to be kept by the organization for which the solicitation is made. [Section 44.08; App. p. 8.]

Section 44.12 [App. p. 10] likewise reaches Section 44.06 which authorizes the board to call for further information without limit, beyond that supplied in the Notice of Intention; it reaches Section 44.03 [App. pp. 4, 5] which empowers the board to make private investigation as to allegations of such notice; it grasps Section 44.02 [App. p. 4] which authorizes the board to recall the Information Card, and Section 44.01 [App. p. 2] which defines and classifies solicitors and promoters; it is also directly connected with Sections 44.13 [App. p. 10], 44.14 [App. p. 10], 44.15 [App. pp. 11, 12], 44.16 [App. p. 12], 44.17 [App. p. 13], 44.18 [App. p. 13] and 44.19 [App. pp. 13-19]. Section 44.16 [App. p. 12] exempts only solicitations made "solely" for evangelical, missionary or re-

ligious purposes, and it exempts the solicitors for such organizations from the burdens of the same list of sections, if the solicitor represents in each case that the entire amount collected, "without any deductions whatever" shall be turned over to the "named beneficiary."

By exempting solicitations "solely" for religious purposes as above stated, it thus excludes the need of the Information Card, but the exemption carries the qualification that if the board is of "the opinion" that the solicitation "is calculated to give the impression" to the person solicited that the purpose is "in whole or in part charitable," the board shall investigate and "give publicity to its findings in such manner as it may deem best to advise the public of the facts of the case." [App. p. 12.]

Section 44.12 [App. p. 10] is qualified by Section 44.07 [App. p. 8] which limits the use of the Information Card; the same is true of Section 44.08 [App. p. 8]; it is qualified and restricted by Section 44.10 [App. p. 9] which requires filing of formal written permission of the association for which solicitation is made, and Section 44.11 [App. p. 9] which adds to such requirements.

Section 44.12 [App. p. 10] goes forward and in Section 44.14 [App. p. 10] piles up the burden of detailed reports to the board upon the solicitor who has used the Information Card and upon the association for which solicitation is made; Section 44.15 [App. pp. 11, 12] adds additional burdens as to the use of the Information Card in soliciting, almost as comprehensive as Section 44.05 [App. pp.

5-7]; Sections 44.17 [App. p. 13] and 44.18 [App. p. 13] are minor limitations on the use of the Information Card in soliciting, and Section 44.19 [App. p. 13] is tied firmly in line with Section 44.12, since every promoter is made a solicitor. [Section 44.01; App. p. 2.]

Section 44.16 leaves appellant and its solicitors subject to Section 44.12, and all others involved with it, but by indirection it becomes the basis for the exclusion of appellant and others similarly situated, from classification as religious organizations, for it exempts from Sections 44.12, 44.02, 44.03, 44.05, 44.06, 44.07, 44.08, 44.09, 44.10, 44.11, no charitable activity and no solicitation for a "solely" religious purpose if 100% of the donations are not applied to the intended purpose.

It thus appears from all of the foregoing that said ordinance must be judged as a whole and that an attack upon the constitutionality of Section 44.12, which prohibits solicitations without presentation of an Information Card, or almost any other section, directly involves many other sections and in fact challenges the entire scheme and system set up.

The State Supreme Court's opinions, both the majority and the dissenting, obviously have so regarded the matter for the plaintiff's complaint only attacked certain sections, including the section requiring a permit (Information Card or license) [Sec. 405; App. p. 5], as violative of the Federal Constitution while the opinions consider and the Court covered all sections in its decision.

II.

The State Supreme Court Erred in Holding a Law Is Valid Which Classifies as Charitable and Non-Religious All Solicitations by Religious Organizations Which Are Not Solely for Religious Purposes.

On the authority of *In re Dart,* 172 Cal. 47 and principles laid down in decisions of this court involving religious freedom, appellant has contended and now urges that dispensing charity is an integral part of that religious freedom contemplated and protected by the First and Fourteenth Amendments to the Federal Constitution. The dissenting opinions of Justices Carter and Edmonds hold the same view. (S. J. pp. 79-81, 105.)

It would be difficult to overcome Justice Hinshaw's exposition of this proposition in the *Dart* case and the majority opinion of the State Supreme Court does not attempt to do so.

It seems impossible to present this doctrine better than, or as well as, Justice Hinshaw has done. Hence we quote from the *Dart* opinion pertinent excerpts as follows:

> "The Salvation Army is a religious organization founded on and believing in the teachings of Christ. It has been established for fifty years. It has its churches and charitable organizations throughout the United States and other countries. Profoundly impressed with the Founder's sympathy for the poor and afflicted, and with His teachings, that 'Now abideth faith, hope and charity, these three, but the greatest of these is charity,' and, 'Now, the end of the commandment is charity out of a pure heart,' it has made its special field of religious work the relief of the destitute and the rescue of society's outcasts.

It has found that it cannot lead the spirit of the weary and heavy burdened without first ministering to his physical necessities. While 'man does not live by bread only,' he cannot live at all without bread. Therefore, the charitable organizations of the Salvation Army are vital, integral parts of its religious life and work." (*In re Dart*, 172 Cal. 49.)

After holding the Los Angeles Charity Ordinances violative of the Fourteenth Amendment as an attempted exercise of the police power in the regulation of solicitations for charity and the sale of donated articles in second-hand stores, the opinion proceeds:

"But there is another aspect of the question clearly presented, and as clearly demanding consideration. This is the religious aspect. The petition shows that the charities of the Salvation Army are a vital part of its religious life work. One need not write as a theologian in expressing, as we do, the most profound veneration for religion as embodying the highest ethical concepts of a people, and as satisfying their spiritual yearning for a life finer than this earthly one. The two religions exercising the most potent influence in shaping the material and spiritual destinies of the white-skinned races are the Jewish and the Christian. To these as to all others perfect freedom of exercise is constitutionally guaranteed. In both of these religions charity is the central word. It is enjonied, not as a good thing, or a wise thing, or as a kindly thing only, but as a fundamental part of the religion itself. Says the Jewish faith: 'On three things the world is stayed: on the Thorah (the law) and on worship and on the bestowal of kind-

ness.' 'Now the end of the commandment is charity out of a pure heart,' said Paul to Timothy. 'Charity is the scope of all God's commands,' preaches Chrysostom. 'All perfection of the Christian life is to be attained according to charity,' declares Thomas Aquinas. Does it need more, does it need so much, to show that in these religions the bestowal of charity, the devotion of life to charity, are a part of the religion itself? And does it demand discussion to establish so plain a truth as that touching religion there is a doubtful zone which legislation should be most reluctant to enter? The founders of the nation recognized it when they placed the great guaranty of religious liberty in the constitution of a free people, and it is for every court to see that that liberty is not encroached upon and that freedom gnawed and impaired by any experimental legislation however well meant. So when legislation does enter that uncertain domain, the fact that it is there must bring to it condemnation. In accordance with the dictate of the constitution itself the doubt will be resolved in favor of religious liberty. And it will be found better in the long run that the free exercise of religions be preserved in its integrity, better for the nation, better for charity itself which owes so much to religion, even if the efficiency of religious charities be not up to the standard of perfection set by the Municipal Charities Commission. If, under that standard, seventy-five cents of every dollar would go to the objects of charity, while under the less efficient methods in vogue but fifty cents of each dollar actually reaches the beneficiaries, it is not to be forgotten that there will be many millions fewer of these dollars to be distributed in charity if the activities of the religious are hampered, thwarted, and stayed." (*In re Dart, supra*, p. 55.)

In Justice Carter's dissent herein, after quoting from the *Dart* opinion, he says:

> "Although concededly acts of charity apart from religious motivation, might be performed by the state, or by a professed atheist or non-religionist, nevertheless, the evidence here establishes beyond contradiction that plaintiff's charities are an integral part of and inseparable part of its religious purpose. From common knowledge and in challenge to the severance theory of the majority opinion, it must be said that acts of charity which do not stem, consciously or unconsciously, from early religious training or Christian inheritance are sparse. It is a matter of common historical knowledge that public charities and benevolent associations for the gratuitous relief of every species of distress, are peculiar to Christianity; no other system of civil or religious policy has originated them; they form its highest praise and characteristic feature. The Apostle Paul in Chapter XIII of his first Epistle to the Corinthians epitomized his concept of the essential intangibles of Christianity and concluded with the immortal verse: 'And now abideth faith, hope, charity, these three; *but the greatest of these is charity.*' Thus charity is the heart and basic principle of plaintiff's religion. To destroy that heart leaves the body lifeless. Yet the majority opinion does just that. It declares charity to be a secular affair in spite of the above showing to the contrary and thus subjects the exercise by plaintiff of its religion to unrestricted regulation and ultimate destruction." (S. J. p. 81.)

Again, Justice Carter reasons:

> "It is true that religious liberty embraces two concepts—freedom to believe and freedom to act. The first is absolute but, in the nature of things, the

second cannot be" (*Cantwell v. Connecticut, supra*, 310 U. S. 296, 303), and that where the religious organization conducts activities characteristic of the secular life of the community, they may be subject to proper regulation under the police power. But, as already pointed out, this power of regulation is not unrestricted and it can only be enforced with due regard to preservation of constitutional rights. Both freedom of religious thought and freedom of religious action come within the protection of the bill of rights. This freedom cannot be whittled away by carving out segments of religious activities and relegating them to the realm of secular affairs. If that were permitted, the right of action for a religious purpose could eventually be destroyed by the gradual severance and classification as secular of every activity undertaken to promote the religious purpose." (S. J. p. 79.)

Our research has revealed no case in which the question now beng discussed has been decided by this court. However, on principle, if one integral activity essential to religion cannot be "whittled away," it seems that another, equally essential, must be within the protection of the Constitution.

In *Murdock v. Pennsylvania,* 319 U. S. 103, 87 L. ed. 1292, Colporteurs sold religious books as they distributed religious tracts for a nominal price. The ordinance of the City of Jeannette required that they pay a license fee to engage in this "business."

This court said that "the integrity of this conduct or behaviour as a religious practice has not been challenged," and held that the ordinance, as applied to the Jehovah's Witnesses' colporteurs constituted an unconstitutional prior restraint upon the right of freedom of religion. It is said:

> "They may not prohibit the distribution of handbills in the pursuit of a clearly religious activity merely because the handbills invite the purchase of books for the improved understanding of the religion or because the handbills seek in a lawful fashion to promote the raising of funds for religious purposes."

In *Cantwell v. Connecticut*, 310 U. S. 296, 87 L. ed. 295, Cantwell was a solicitor for Jehovah's Witnesses. The court said of his activities:

> "We find only an effort to persuade a willing listener to buy a book or to contribute money in the interest of what Cantwell, however misguided others may think him, conceived to be true religion."

The opinion treats such an activity as coming under the concept of freedom of religion which it terms "freedom to act," and which is violated by a law which requires a certificate from an administrative officer as a condition precedent to its exercise for which certificate a fee must be paid.

The activities of the appellant and of its solicitors consist in securing donations of money or goods which are used for religious purposes of the organization. The sale of such goods, like the sale of books by Jehovah's Wit-

nesses, are for the same purposes. It was said in the *Murdock* opinion,

> "It is a distortion of the facts to describe their activities as the occupation of selling books."

Yet, the Jeannette Ordinance so classified such sale for the purposes of regulating charities, and the instant Los Angeles Ordinance attempts to do the same, by arbitrarily providing that all solicitations for charitable purposes are non-religious, and that unless the purpose is purely religious, as Justice Edmonds puts it, "to meet the doctrinal church activities," it is subject to police regulations adopted to any business enterprise.

Appellant maintains that money spent on religio-charity is as fully within the protection of the guaranty of freedom of religion as when used to print tracts or to pay commissions to the colporteurs of Jehovah's Witnesses[3] although; as above stated, the majority opinion of the State Court makes no attempt to show error in the *Dart* decision, it holds directly contrary thereto by upholding as constitutional the ordinance of which it asserts:

> "The trial court erroneously concluded that because plaintiff solicits funds for charitable purposes as part of its religious program its solicitations are solely

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[3]Such colporteurs receive one-half of their collections to pay traveling and living expenses. See Note 7, *Murdock v. Penn*, 319 U. S. 104.

for religious purposes within the meaning of the ordinance. The ordinance specifically differentiates charitable from religious purposes. No person may solicit 'any contribution for any charitable purpose' without complying with the requirements of the ordinance. The ordinance does not exempt solicitations for charitable purposes undertaken by religious organizations. Solicitations for charitable purposes, namely, for 'philanthropic, social service, benevolent, patriotic' purposes, are subject to regulation whether or not they are undertaken by a religious organization. The intention to maintain a sharp differentiation between charitable and religious purposes is apparent in the provision that if a solicitation for religious purposes is likely to give the public the impression that funds are sought for charity, the board shall 'investigate the matter of such solicitation and give publicity to its findings thereon in such manner as it may deem best to advise the public of the facts of the case.' The solicitation of funds to provide food, shelter, and clothing for those in distress is clearly for a charitable purpose and is therefore regulated by the ordinance. Plaintiff admittedly solicits funds for the purpose of giving relief to persons in distress. Since this purpose is charitable within the meaning of the ordinance, plaintiff's solicitations for that purpose are subject to the ordinance." (S. J. p. 70.)

Appellant is content to rest this issue on the balance of merit between the majority opinion herein as against Justice Hinshaw's pronouncement and the dissenting opinions of Justices Carter, Schauer and Edmonds.

III.

If It be Held That the Dispensation of Charity by a Religious Organization Is an Integral Part of Its Religion and That Solicitations for That Purpose by Its Solicitors Are Within the Protection of the Constitutional Guarantee of Freedom of Religion the Ordinance Involved Is Null and Void.

If the doctrine of the *Dart* decision is sound it hardly requires argument to show that the instant ordinance throughout, violates the guarantee of freedom of religion and its exercise.

The provisions of the law supply its own condemnation. It requires one who would solicit to obtain a permit from the Department of Social Service as a condition precedent to soliciting! This is an unlawful restriction upon the exercise of the right of freedom of religion. (*In re Dart*, 172 Cal. 47; *Cantwell v. Connecticut*, 310 U. S 296.)

The Department is empowered to refuse a permit. The ordinance contains no provision which directs that upon compliance by an applicant with designated requirements an Information Card (permit) shall be issued.

Ten days before the applicant may begin soliciting he must file the Notice of Intention [Sec. 44.05; App. p. 5], which is the application for a permit, and the Department may investigate the matter and no time limit is placed on the investigation, and may require additional information.

without limit as to such requirements. [Sec. 44.03; App. pp. 4; 5.]

These provisions alone would bar an itinerant preacher or solicitor from serving their calling in Los Angeles, and thus constitute unlawful prior restraints. (*Murdock v. Pennsylvania*, 319 U. S. 104.)

In investigating, the Department may have access to all books, records and papers of the applicant or the religious organization for whom he expects to solicit. [App. p. 5.]

And if he ever receives an Information Card he must read, or give any person solicited time to read that document [App. p. 10], which contains volumminous information on eleven matters, and as many more as the Department chooses to add and which Justice Carter characterizes as being as complex and demanding as the much maligned federal income tax forms. He states that to prepare the data required to be set forth in the application for permit, Section 44.05 requires such an educational background as to cause wonder as to how the average almsman could supply it. [T. R. p. 109.]

Solicitors who receive compensation are classed as "promoters" and they must secure a "license", for which the fee is $25.00, and post a bond in the sum of $2,000.00, to insure against theft; they are subject to unrestricted investigation by the Board of Social Service Commissioners and must file with it a voluminous statement upon specified matters and such other "information" as the Board may

quire, and must satisfy the Board that the applicant is of "good reputation" and character. [App. pp. 13-15.]

It is believed that the foregoing, which is merely a sample of the burdensome prior restraints found in the ordinance, suffices to show that it has nothing in common with those "identification" and "registration" ordinances, and "regulatory measures" which are said to mark the limit of permissible restraints upon the exercise of the right of religious freedom. (*Cantwell v. Connecticut*; *Murdock v. Pennsylvania*, both *supra*.)

Again, reference is made for support of the above assertion to the dissenting opinions [T. R. p. 126], in this case which analyze the ordinance sections, whereas the majority opinion makes no pretense at doing so.

Under the next caption other ordinance provisions will be pointed which, it will be contended, are violative of federal constitutional guarantees, even if said solicitations for charity be regarded as purely secular.

For the sake of brevity reference is made to the elucidation therein presented, and, it is believed that it will be obvious that such other provisions are, as Justice Edmonds declared, "clearly invalid", as violations of the right of freedom of religion.

IV.

Even if It Were Held That the Solicitations Last Named Can Be Legally Classed by Law as Secular and Regulated as Lawful Enterprises Said Ordinance Is Null and Void.

Legislative enactments may not, under the guise of the police power, impose unnecessary, unreasonable or unduly burdensome restrictions upon the pursuit of useful activities or of private property.

Washington v. Roberge, 278 U. S. 116;

Holden v. Hardy, 169 U. S. 366;

McKay Jewelers, Inc. v. Bowron, 19 Cal. (2d) 595;

In re Fuller, 15 Cal. (2d) 425;

Skalko v. City of Sunnyvale, 14 Cal. (2d) 213;

Ex parte Dickey, 144 Cal. 234.

A legislative body may not delegate to administrative officers or boards the legislative function or discretion unrestricted by definite standards to control their decisions.

Schecter v. U. S., 295 U. S. 494, 79 L. Ed. 1570;

Panama Ref. Co. v. Ryan, 293 U. S. 388, 79 L. Ed. 449;

Yeck Wo v. Hopkins, 118 U. S. 356.

General and indefinite terms in a statute do not suffice to provide a standard for official action.

Schecter v. United States,

Panama Ref. Co. v. Ryan, both *supra*;

Morgan v. United States, 304 U. S. 1;

McDonough v. Goodcell, 13 Cal. (2d) 741.

With the foregoing fundamental principles as a foundation, various provisions of the instant ordinance will be tested. It may fairly be assumed that the activity and "business" of relieving human distress and alleviating the needs of the poverty stricken is among the most useful of endeavors. Hence appellant contends that the provisions of the ordinance to be enumerated are invalid:

In consideration of the nature of the business of supplying, clothing, warmth, medical care, food and similar necessities to men, women and children in distress, the following requirements of Section 44.05 are so unreasonable and burdensome as to frustrate the purposes and efforts of the solicitor who seeks donations of money of goods in conducting their charitable endeavors.

Section 44.03 requires the applicant for a permit to solicit to file his application "Ten days prior to the beginning of the solicitation." [App. p. 4.] The freezing must continue to freeze, the starving remain without food, and the sick suffer and perhaps die because of this prohibition.

In the application section, 44.05, requires "complete information" upon the following matters to be stated:

"(a) The purpose of the solicitation and use of the contribution to be solicited;

(b) A specific statement, supported by reasons and, if available, figures, showing the need for the contribution proposed to be solicited;

(c) The character of such solicitation and how it will be made or conducted;

(d) The expenses of the solicitation, including salaries and other items, if any, regardless or from what funds such expenses are payable;

(e) What portion of the contributions collected as a result of the solicitation will remain available for application to the specific purposes declared in the Notice of Intention as the object of the solicitation;

(f) A specific statement of all contributions collected or received by such person or association within the calendar year immediately preceding the filing of such Notice of Intention. The expenditures or use made of such contributions, together with the names and addresses of all persons or associations receiving salaries, wages, compensation, commissions or emoluments from such contributions, and the respective amounts thereof;

(g) The names and addresses of the officers and directors of any such association for which the solicitation is proposed to be made;

(h) A copy of the resolution, if any, of any such association authorizing such solicitation, certified to as a true and correct copy of the original of such resolution by the officer of such association having charge of the records thereof;

(i) A statement that the signers of such Notice have read and are familiar with the provisions of this Article and will require all solicitors engaged in such solicitation to read and be familiar with all sections of this Article prior to making any such solicitation." [App. pp. 5, 6.]

A solicitor may not even request in advance that a donation be made, if and when, a permit is secured for Section 44.01 provides:

"A solicitation as defined herein shall be deemed completed when made, whether or not the person making the same received any contribution or makes any sale referred to in this Article." [App. p. 2.]

The delays incident to and authorized by the ordinance which retard solicitations for charity are unreasonable, unnecessary and arbitrary.

The Department may investigate the allegations of the Notice of Intention and no limitation as to time is provided (Sec. 44.03(a)); it may check the books and records of the applicant, or the person in distress or the organization which the applicant assists (Sec. 44.03(b)). [App. p. 4.]

A person who has finally obtained a permit or license to solicit must read the entire contents of the Information Card to anyone solicited, or allow that person time to read it under Section 44.12 [App. p. 10], and the Information Card contains all "pertinent facts set forth in the Notice of Intention, which have been enumerated above, and "any additional information obtained as shall in the opinion of the Board be of assistance to the public to determine the nature and worthiness of the purpose for which the solicitation is made." [App. p. 5.]

No limit as to the volume, or the scope of the Information Card is fixed by the ordinance other than the personal opinion of the Board members as to what would be of assistance to the public.

After the reading of the above mentioned document the solicitor must tender a receipt to the donor, but the receipt is not an ordinary acknowledgment of money received. Section 44.15 dictates that it must contain substantially the following:

"(a) The name of the association, if any, in whose name or upon whose behalf the solicitation is made.

(b) A statement as to whether the contribution solicited is to be applied for the general purposes of

such association, if any, or for specific purposes, and if for specific purposes the nature thereof shall be clearly stated.

(c) A statement that the Information Card, issued by the Department, was presented to the person making contribution for his perusal prior to receipt by the solicitor of the contribution receipted for." [App. p. 11.]

If the solicitor receives compensation he is classed as a promoter. [App. p. 2.] Among the burdensome and unreasonable provisions governing promoters are:

His application for a license must contain, "in addition to such information as the Board may require":

"(a) The name and address of the applicant, and if such applicant be a corporation, the name and address of each of its managing officers and agents, and, if it be an unincorporated association, firm or partnership, the name and address of each member of such unincorporated association, firm or partnership;

(b) A succinct statement of facts showing that the applicant, if not a corporation or an unincorporated firm, association or partnership, is of good character and reputation, or if the applicant be a corporation that each of its managing officers and agents is of good character and reputation, or if the applicant be an unincorporated association, firm or partnership, that each of its members is of good character and reputation.

(c) The general plan, character and method in or by which applicant proposes to conduct its or his business as a promoter." [App. p. 14.]

The unreasonable elements of this requirement are, that the Board is permitted to require information upon any subject ancestry of the applicant, his proficiency in mining, law, or dentistry, or his views on politics or religion.

Also, the requirement that the applicant establish "good reputation" is unreasonable. As Justice Carter points out; this is a matter which as to a solicitor for charity should not be of substantial concern, and as he says "a most wicked man of public ill repute may espouse a very worthy cause," and many have reformed from the gutter and have done forceful and effective work. [T. R. pp. 117 and 118.]

PROVISIONS VIOLATIVE OF THE GUARANTEE OF DUE PROCESS BECAUSE OF LACK OF ADEQUATE STANDARDS.

In addition to the provision of Section 44.19, which authorizes the Board to require information from an applicant for a promoter's license, without restriction or standard as to the character or subject matter of the information, the same section authorizes the Board to base its decision granting or denying the license, in part upon possibly irrelevant and prejudicial information. [App. pp. 16, 17.]

The same section authorizes the Board "to make such further investigation of the applicant and its or his affairs as the Board deems advisable" and further makes the result of such investigation a part of the grounds for granting or denying a promoter's license. [App. p. 16.]

What "affairs" are to be investigated and acted upon? The term is broad and may well include matters of privacy which would not remotely affect the applicant's qualifications as a solicitor or promoter.

Also, the Board is empowered to revoke a promoter's license upon the ground that he or "his agents or employees have been guilty of an act or omission in the conduct of his business which is unfair, unjust, inequitable or fraudulent." [App. p. 17.]

Justice Carter says of this language:

> "These grounds, except the last one stated, are vague and uncertain."

Section 44.14, which provides that solicitors shall file "a written report," stating "in detail"

> "all expenses of or connected with such solicitation, and showing exactly for what uses and in what manner all such contributions were or are to be disbursed or distributed."

provides no adequate standard as to what degree of detail is required, and if its language be taken literally, it is most unreasonable and onerous beyond logical needs. [App. p. 10.]

Keeping ever in mind that the business regulated is charity, it seems obvious that minute details of expense must be numerous and that the cost and time required for compilation of such a report could more profitably be used for charity.

Section 44.03 authorizes the Department, in issuing a permit to solicit, to state, "they endorse such charitable association," or that the issuance of such card is "not an endorsement" thereof, and no standard is provided to direct the decision of the Department, but it is thereby empowered to act arbitrarily and capriciously. [App. p. 5.]

By Section 44.03 the Department is given power to set forth in the Information Card information gleaned from its own investigation, whose scope is in no way limited, if "in the opinion of the Board" the information "shall be of assistance to the public to determine the nature and worthiness of the purpose for which the solicitation is made." [App. pp. 4, 5.]

Here nothing but the ideas of Board members as to what considerations should be regarded in deciding the "worthiness of the purpose" of the solicitation are to determine what information shall be set forth.

Such a standard is uniformly condemned by the decisions.

Schecter v. United States, supra;
Panama Ry. Co. v. Ryan, supra;
Morgan v. United States, 304 U. S. 1.

The provision of Section 44.06 herein above quoted authorizes the Board to call upon an applicant for a permit for such information in addition to that set forth in the Notice of Intention, if the Board is of the opinion that such Notice of Intention does not disclose sufficient information "for the public concerning the facts required to be stated," and the additional information must be filed within 48 hours after it is so requested! [App. p. 6.]

This provision is unreasonable in the brevity of the time allowed the applicant to file the information called for which may pertain to matters not within his knowl-

edge. In fact, all of the items required to be set forth pursuant to Section 44.05, which have been quoted, must be secured from the organization conducting the solicitation.

Said provision of Section 44.06 also gives the Board unlimited discretion to decide what information is, or is not, sufficient for the purposes of the public. [App. p. 6.]

PROVISIONS WHICH INFRINGE THE EQUAL PROTECTION OF THE LAWS CLAUSE OF THE FOURTEENTH AMENDMENT.

Section 44.01 of the ordinance involved violates the above named guarantee in its classification of solicitors.

A "promoter" is defined as "any person who for a pecuniary compensation . . . solicits contributions . . . for or on behalf of any other person or any charitable association, corporation or institution . . . provided, however, that pecuniary compensation or consideration as used herein, shall include, but shall not be limited to, participations or a percentage basis in any fund solicited . . ., provided further, that no person who is a bona fide paid officer or employee of a Social Service Commissioner, shall be considered a promoter within the meaning of this article." [App. p. 2.]

We have here a law which merges two violations of the equal protection of the laws guarantee in a single provision.

The only distinction which is made between a "promoter" and a "solicitor" is that the former receives compensation for his efforts. This definition includes the colporteur in the *Murdock v. Pennsylvania* case and it

makes of every solicitor for charity who does not work gratuitously a promoter.

Yet a promoter must pay a flat license fee of $25.00, and post a bond in the sum of $2,000.00; his license may be revoked for "unfair or inequitable" solicitation; his "affairs" may be investigated and used by the Board as one ground for refusing to license him, as has been shown herein, none of which provisions apply to "solicitors". [App. pp. 13-15.]

By virtue of the arbitrary nature of this definition of a solicitor-promoter, appellant's store keeper was classed as a promoter.

But promoters who are employees of a social service agency endorsed by the Board cease to be promoters or solicitors, by reason of such endorsement, and no reasonable or adequate standard is provided upon which the Board's decision in the matter is to be governed. [App. p. 2.] Those not endorsed are denied the equal protection of the laws in respect to endorsement and to the classification of their employee-solicitors.

The authorization of the Department to endorse a charitable association or to withhold endorsement contained in Section 44.03 has been pointed out as invalid on other grounds. [App. p. 5.] It also arbitrarily creates two classes of Information Cards, and two classes of charitable associations, the endorsed and the unendorsed, the assignment to which classes of any solicitor or association is not regulated by any adequate standard.

The provision of Section 44.06 respecting requests for additional information on 48 hours' notice, has been pointed out. [App. p. 7.]

This grant of power, being without standard, is arbitrary and provides opportunity for official discrimination in its use.

Similarly, and for the same reason, the investigating power of the Board, authorized by Section 44.16 as to applications for solicitors' permits [App. p. 12], and by Section 44.19 [App. p. 16], in passing upon applications for promoters' licenses, afford opportunity for and give power to discriminate, and to favor or prejudice any applicant, without regard to the merit of his cause or his qualifications.

Both provisions have been discussed on other grounds.

Section 44.03, which empowers the Department to issue Information Cards [App. p. 4], also grants it jurisdiction to refuse to do so, and no standard is to be found in said section or elsewhere in the ordinance, express or implied to govern the Department's action.

Justice Traynor, writing the majority opinion, states that the Board may not deny an application for an Information Card because the ordinance does not expressly empower it to do so. [T. R. p. 96.] However, the power is implied, since the Board is given unrestricted discretion to require any additional information [App. p. 7], which it deems necessary, and to conduct undefined and unlimited investigations, and to base its decision thereon, as has been shown herein.

V.

The Ordinance Is Void Because It Violates the Inhibition of the Fourteenth Amendment Against Taking Property Without Due Process of Law.

It may be said that each of the ordinance sections and provisions which operate as illegal prior restraints of the exercise of religious freedom by appellant through its officers, promoters and solicitors violates the guarantee of the Fourteenth Amendment that property shall not be taken without due process of law, for that clause necessarily includes the right to the acquisition of property.

Hence, appellant contends that the provisions of the sections heretofore assigned under Caption III as prohibited prior restraints upon the exercise of the right of freedom of religion are infringements of appellant's right to acquire property as guaranteed by the Fourteenth Amendment to the Federal Constitution since, except for their restrictions, appellant's solicitors would be free to secure donations from the public to be used in furtherance of its religious activities.

Appellant further contends that every provision of the ordinance which is void for any other reason heretofore assigned herein violates the due process clause of the Fourteenth Amendment in its guarantee of the protection of property and property rights.

This necessarily results as the appellee's answer claimed the right to prosecute appellant for failure to comply with any provision of the ordinance and had so notified appellant. [T. R. pp. 5, 6.]

The regulations contained in Section 24.01 which pertain to junk dealers, second-hand stores and pawn brokers,

as applied to appellant's store, are, if invalid, obviously in contravention of said due process clause.

It remains to specify the unconstitutional provisions and to elucidate the reasons which sustain appellant's contention that they are invalid.

Heretofore, the decision in *In re Dart*, 172 Cal. 47, has been unchallenged as a sound statement of the law as to all matters therein decided.

One of the principle items in controversy was the validity of the ordinance as applied to the second-hand stores operated by the Salvation Army. That ordinance as does the present one, required that a permit be secured from the city charities commission to entitle any association or corporation, religious or secular, to sell personal property. The City Commission caused the arrest of one of the Army's officers, charging him with selling and offering for sale goods and wares which had been solicited and donated without a written permit. (*In re Dart*, 172 Cal. 47, 49.)

The opinion includes this arrest and the requirement of the ordinance that a permit be obtained for the purposes above named in its assertion that the city has no power to require a permit as condition precedent to a charitable organization engaging in charitable work. Justice Hinshaw says:

> "Unhesitatingly we answer this cannot be done, that it constitutes an attempt to use the policies power in any arbitrary, unreasonable, and oppressive manner. It necessarily contains an assertion of the power to prohibit and suppress vocations and occupations which, entirely aside from their religious character,

> are from a worldly point of view in and of themselves not only harmless but positively beneficial to humanity."

Regarding the question in its religious aspect, the opinion shows that charity is the central concept of religion and condemns the entire ordinance as violative of the right of religious liberty. (172 Cal. p. 55.)

This doctrine is sound. It is unreasonable, arbitrary and oppressive to apply to a store in which donated articles are offered for sale the restrictive, and to such a store, prohibitive, regulations contained in the instant ordinance, designed to safeguard the public against fraud and crime.

As the majority opinion in this case states:

> "Regulation of the business of junk dealers and secondhand junk dealers and secondhand dealers is designed to protect the public interest by preventing such dealers from becoming outlets for stolen goods," (citing many authorities). [T. R. p. 82.]

It is unreasonable to the point of absurdity to suggest or imagine thieves, burglars and robbers, taking their loot to a dispensary of charity which receives nothing except as donations. It is equally absurd to assume that solicitors for charity would seek out as objects of solicitation the haunts of criminals, and to suppose that if they were so foolish as to do so, success would crown their efforts. The entire foundation for such regulations being shackled upon stores selling only donated articles is fallacious and permeated with the rot of unreason.

But regarding Section 24.01 as an ordinance intended to reasonably regulate natural outlets for stolen goods, it is still arbitrary and violative of due process.

Of the enactment, Justice Edmonds' dissenting opinion states that it is unconstitutional because

> "it sets no standard to which an applicant for a license must conform. * * * It states no grounds justifying a denial of the application, specifies no time within which an investigation must be made, makes no provision for a hearing upon the application and by the use of the word 'may' impliedly allows the Board to grant or withhold official favor for any reason which whim or fancy may dictate. No standard of character or business responsibility is set for the guidance of the Board nor are there any qualifications specified for one desiring to deal in secondhand goods such legislation has been uniformly held not to measure up to the requirements of constitutional guarantees." [T. R. p. 135.]

The ordinance is lacking in all of these essentials, which a mere perusal of its language reveals.

Under the title "Requisites for Permits" the only requirement is that a written application be filed specifying the street and number of the place where the business is to be conducted, and the payment of a fee. The provision then reads:

> "Thereafter the Board may issue a permit to the applicant."

The grounds for revocation are: That the permittee has violated any law relating to or regulating any such business or carrying on the business in an unlawful manner. [App. pp. 21, 22.]

The other matters enumerated by Justice Edmonds as unconstitutional are simply not mentioned in the section.

The deficiencies which he points out have been "uniformly held not to measure up to the requirements of" the constitutional guarantee against property being taken without due process of law by an ordinance or law. (*In re Dart*, 172 Cal. 47: *Yick Wo v. Hopkins*, 118 U. S. 356; *Hewitt v. State Board of Med. Examiners*, 148 Cal. 593.)

For the foregoing reasons the provisions are fatally defective for lack of standards, alone. (*Schecter v. U. S.*, 295 U. S. 494; *Panama Refining Co. v. Ryan*, 293 U. S. 388.)

Conclusion.

Appellant believes that the legal propositions upon which he has relied as set forth herein are fundamental and are settled law in all jurisdictions. Hence of the many decisions available for their support a limited number only have been selected for citation.

However not many Courts have considered the question presented under Caption II herein, to-wit, the inseparability of charitable activities of a religious organization when performed in furtherance of its doctrinal activities from the latter.

Our extended research has discovered no direct decision upon that issue except *Matter of Dart*, 172 Cal. 47. The dissenting opinions in this case are, however, well considered and highly illuminating.

It is believed that the Ordinance involved represents a studied effort whose definite objective is to relieve residents and business from the annoyance of numerous solicitations, which are viewed as pestiferous and sometimes costly, since for various reasons persons asked to donate find it difficult to refuse.

In the accomplishment of this purpose and result, which undoubtedly is genuinely regarded as meritorious and justifiable by many who feel victimized through solicitations, no scheme or plan can well be devised other than one similar to that set up in the instant Ordinance and its predecessor of the *Dart* case consideration.

Such a plan necessarily treats charitable activities as business enterprises, and restricts the field to an approved list or group of organizations sympathetic with the plan or controlled by its adherents to work in harmony therewith, and just as certainly eliminates the "little people" and organizations.

Conflict is unavoidable between this concept and religion, which sees in each individual a soul to be saved, and what better approach than through charity? To dispense it they must have funds.

It is especially true of the little people and organizations that they or their membership have little to give. Hence this avenue to reach the poor people, whom, as Lincoln said, God must love because he made so many of them, and the religionist is taught to love, is closed if the purposes of such ordinances can be carried out without in-

fringement of the right to freedom in the exercise of religion.

However, appellant's counsel believes that no plan having the purpose above indicated can be devised which does not delegate to administrative officers wide discretion. If definite standards are provided and if charitable activities are not to be guided into the hands of the approved list, the plan must fail, and every reformed and converted former debased individual or other all-out religionist who feels called by God to administer to the sick and afflicted would again swarm into stores and intercept the shopper or housewife on the streets with requests for donations.

At last the issue is in the hands of this Court, where appellant is content to have it rest.

Respectfully submitted,

ROBERT H. WALLIS,
Attorney for Appellant.

APPENDIX.

Exhibit "A."

CHARITIES

L. A. Muncipal Code—Ord. No. 77,000

As Amended by Ordinance Nos. 80,920, 81,618 and 84,121.

Chapter 4

Article 4—Charities and Relief

Sec. 44.01. Definitions:

For the purposes of this Article, the following words are defined and shall be construed as hereafter set forth unless it shall be apparent from the context that they have a different meaning:

"Board" shall mean the Board of Social Service Commissioners;

"Charitable" shall include the words philanthropic, social service, benevolent, patriotic, either actual or purported;

"Contribution" shall include the words alms, food, clothing, money, property or donations under the guise of a loan of money or property;

"Department" shall mean the Department of Social Service;

"Person" (Added by Ordinance No. 80,920, approved March 1, 1939) shall be construed as defined in Sec. 11.01 of this Code.

"Promoter" (Added by Ordinance No. 80,920, approved March 1, 1931) shall mean any person who for pecuniary compensation or consideration received, or to

be received, solicits or is engaged in the business of or holds himself out to the public as engaged in the business of soliciting contributions for or on behalf of any other person or any charitable association, corporation or institution, or conducts, manages or carries on or agrees to conduct, manage or carry on or is engaged in the business of or holds himself out as engaged in the business of conducting, managing or carrying on any drive or campaign for any such purpose; provided, however, that pecuniary compensation or consideration as used herein, shall include, but shall not be limited to, participation on a percentage basis in any fund solicited, or raised, for or on behalf of any other person, firm, association or corporation; provided, further, that no person who is a bona fide paid officer or employee of a social service agency endorsed by the Board of Social Service Commissioners, shall be considered a promoter within the meaning of this article.

"Solicitation" shall mean and include the following:

(1) Any oral or written request;

(2) The distribution, circulation, mailing, posting or publishing of any handbill;

(3) The making of any announcement to the press, over the radio, by telephone or telegraph, concerning an appeal, assemblage, athletic or sports event, bazaar, benefit, campaign, contest, dance drive, entertainment, exhibition, exposition, party, performance, picnic, sale or social gathering, which the public is requested to patronize or to which the public is requested to make a contribution for any charitable purpose connected therewith;

(4) The sale of, offer or attempt to sell, any advertisement, advertising space, book, card, chance, coupon, device, magazine, membership, merchandise, subscription,

ticket or other thing in connection with which any appeal is made for any charitable purpose or the name of any charity, philanthropy or charitable association is used or referred in any such appeal as an inducement or reason for making any such sale, or when or where in connection with any such sale, any statement is made that the whole or any part of the proceeds from any such sale will go or be donated to any charitable purpose or association.

A solicitation as defined herein shall be deemed completed when made, whether or not the person making the same receives any contribution or makes any sale referred to in this Article.

Sec. 44.02. Powers of Board.

The Board shall have the following powers:

(a) To publish results of any investigation provided for or authorized in Section 44.03, subdivisions (a), (b) and (c) of this Article;

(b) To give such publicity to any such results by such means as may be deemed best to reach the general public and persons interested;

(c) To waive the whole or part of any provisions of Sections 44.03, 44.05, 44.06, 44.10, 44.11, 44.12, 44.13, 44.15, and 44.02 excepting this sub-section, of this Article for the purpose of meeting any extra emergency or calamity;

(d) To request return of Information Cards to the Department upon completion of solicitation for which they are issued or at the expiration of the period for which they are valid;

(e) Upon receipt of additional information which, in the opinion of the Board, shall render incorrect any state-

ment set forth in any such Information Card, the Board shall recall every such Information Card and amend or correct the same or issue in lieu thereof a new Information Card amended or corrected in accordance with such additional information, and that upon receipt of notification to return any Information Card for amendment or correction or new issue, as above provided, the association or person who filed the Notice of Intention for the solicitation for which any such card was issued must present such recalled Information Card to the Department within 48 hours from the time of receipt of said notification;

(f) To waive all conditions of this Article upon application of person filing Notice of Intention, in respect to Information Cards and filing copies of written authorization when a campaign or drive for raising funds for any charitable purpose is given general publicity through the press or otherwise, and when more than twenty-five (25) persons serve as solicitors without compensation, if it shall be proved to the satisfaction of the Board that the publicity concerning the solicitation fully informs the general public and the persons to be solicited as to the facts required to be set forth on the Information Card.

Sec. 44.03. Powers of Department:

The Department shall have the following powers:

(a) To investigate the allegations of Notice of Intention, or any statement or reports;

(b) To have access to and inspect and make copies of all books, records and papers of such person, by or on whose behalf any solicitation is made;

(c) To investigate at any time the methods of making or conducting any such solicitation;

(d) To issue to all solicitors Information Cards which cards shall show:

(1) That same is issued as information for the public and is not an endorsement;

(2) The Board may, pursuant to Ordinance No. 34982, omit above provision and state that they endorse such charitable association;

(3) The pertinent facts set forth in Notice of Intention required under Section 44.05 of this Article;

(4) Any additional information obtained as shall in the opinion of the Board be of assistance to the public to determine the nature and worthiness of the purpose for which the solicitation is made;

(e) To charge a fee for supplying Information Cards, at the rate of four cents per card; provided that when more than twenty-five cards are issued at one time for the same solicitation, the fee for all such cards in excess of twenty-five shall be one cent per card.

Sec. 44.04. Fraud—Solicitation:

No person shall make or perpetrate any misstatement, deception or fraud in connection with any solicitation of any contribution for any charitable purpose.

Sec. 44.05. Charity Solicitation—Notice of Intention:

No person shall solicit, nor shall any officers or member of any association authorize any person to solicit, any contribution for any charitable purpose unless, within the fiscal year of the City in which such solicitation is made and at least ten (10) days prior to the beginning of such solicitation, there shall have been filed with the Department, on a form furnished by said Department, by such

person or association upon whose behalf the solicitation is made, written Notice of Intention to solicit such contribution, which notice shall contain complete information as follows:

(a) The purpose of the solicitation and use of the contribution to be solicited;

(b) A specific statement, supported by reasons and, if available, figures, showing the need for the contribution proposed to be solicited;

(c) The character of such solicitation and how it will be made or conducted;

(d) The expenses of the solicitation, including salaries and other items, if any, regardless of from what funds such expenses are payable.

(e) What portion of the contributions collected as a result of the solicitation will remain available for application to the specific purposes declared in the Notice of Intention as the object of the solicitation;

(f) A specific statement of all contributions collected or received by such person or association within the calendar year immediately preceding the filing of such Notice of Intention. The expenditures or use made of such contributions, together with the names and addresses of all persons or associations receiving salaries, wages, compensation, commissions or emoluments from such contributions, and the respective amounts thereof;

(g) The names and addresses of the officers and directors of any such association for which the solicitation is proposed to be made;

(h) A copy of the resolution, if any, of any such association authorizing such solicitation, certified to as a

true copy of the original of such resolution by the officer of such association having charge of the records thereof;

(i) A statement that the signers of such Notice have read and are familiar with the provisions of this Article and will require all solicitors engaged in such solicitation to read and be familiar with all sections of this Article prior to making any such solicitation.

Sec. 44.06. Charity—Solicitor's Agreement—Notice of Inention—Additional Information:

There shall be filed with the Department with such Notice of Intention a statement of any agreement made with any agent, solicitor, promoter, manager or conductor of such solicitation together with a copy of each agreement which may be in writing. Within twenty-four hours after any change in any such agreement or the making of any new or further agreement, a true copy of such change or agreement, if in writing, or if not, written details thereof shall be filed with the Department. Whenever, in the opinion of the Board, the Notice of Intention filed with the Department does not disclose sufficient information for the public concerning the facts hereinabove required to be stated in such Notice or concerning the person or association making such solicitation or on whose behalf such solicitation is made, then, upon the request of said Department, there shall be filed, in writing, within forty-eight (48) hours after such request, such additional information as may be required by said Board upon the foregoing subjects. Provided, however, that the Board, for good cause, may extend the time for filing such additional information. The Notice of Intention and such additional information, if requested, shall be signed by such person intending to make such solicitation, or if by or on

any association, by at least two officers of such association and shall be open to the inspection of the public.

Sec. 44.07. Name of Solicitor:

No person shall use in soliciting or give to any person whomsoever, either a fictitious name or an alias or any other than his full, true and correct name, or make any such solicitation without at the time of giving to the person solicited his own full, true and correct name, nor shall he impersonate any other person in making such solicitation.

Sec. 44.08. Charitable Associations — Accounting System—Maintenance Of:

No person shall solicit any contributions for or on behalf of any charitable association unless such association is maintaining a system of accounting whereby all donations to it and all disbursements made by it are entered upon the books or records of its treasurer or other financial officer.

Sec. 44.09. (As amended by Ordinance No. 84,121, approved Feb. 5, 1941) Solicitation—Boxes—Receptacles:

(a) No person shall solicit any contribution for any purpose by means of any box or receptacle, upon any public street, sidewalk, or way, or in any public park or in any publicly owned or controlled place, except by the express written permission of the Board.

(b) No person shall solicit any charitable contribution, or any contribution for any real or purported charitable purpose, by means of any box or receptacle in any place immediately abutting upon any public sidewalk or way, or

in any place of business open to the public, or in any room, hallway, corridor, lobby or entranceway, or other place open to or accessible to the public, or in any place of public resort, without first filing with the Department a "notice of intention" as required by Sec. 44.05, and every person so soliciting must in all other respects comply with the provisions of this Article.

Sec. 44.10. Charitable Associations—Permission by to Solicit:

No person shall use the name of any association in charge or control of any charitable activity in any solicitation without having written permission from two of the officers of such association, to use its name or the name of or reference to such charitable activity, which written permission must be for a specific event or a specified period of time and a copy of such permission must be filed with the Department prior to any such use.

Sec. 44.11. Charitable Associations—Solicitor—Authorization, Exhibition of:

No person shall solicit in the name of or on behalf of any charitable association unless such solicitor has:

(a) Written authorization of two officers of such association, a copy of which shall be filed with the Department; and which authorization and copy shall each bear a specimen signature of the solicitor; such written authorization shall expressly state on its face the period for which it is valid which shall not exceed ninety days from the date issued;

(b) Such authorization with him when making solicitations and exhibits the same on request to persons solicited or police officers or agents of the Department.

Sec. 44.12. Solicitation—Information Card:

No person shall solicit any contributions unless he exhibits an Information Card provided for in Sec. 44.03 of this Article and reads it to the person solicited or presents it to said person for his perusal, allowing him sufficient opportunity to read same, before accepting any contribution so solicited.

Sec. 44.13. Solicitation—Radio, Telephone, Telegraph:

No person shall solicit any contributions by printed matter or published article, or over the radio, telephone or telegraph, unless such publicity shall contain the data and information required to be set forth in the Information Card. Provided, that when any solicitation is made by telephone, the solicitor shall present to each person who consents, or indicates a willingness to contribute, prior to accepting a contribution from said person, such Information Card or a true written copy thereof.

Sec. 44.14. Solicitations — Report — Time — Expenses—Uses:

Every person soliciting any contribution for any charitable purpose must file with the Department within 30 days after the close of any such solicitation or within 30 days after a demand therefor by the Department a report to the Department, stating the contributions secured from or as a result of any such solicitation, and in detail all expenses of or connected with such solicitation, and showing exactly for what uses and in what manner all such contributions were or are to be disbursed or distributed. Every such report shall be made on forms to be furnished by the Department, and signed by the persons or association filing or obligated to file the Notice of Intention and

such report, if made by any such association, shall be signed by at least two officers thereof. Provided, that when any such solicitation is made by any such association such report need be filed only by such association and not by an individual solicitor engaged in any such solicitation.

Sec. 44.15. Contributions—Receipt, Contents of:

No person shall solicit any contribution for any charitable purpose unless such person shall tender to each person making such contribution a written receipt signed by the solicitor which contains in addition to a description of the amount and kind of the contribution, substantially the following matters:

(a) The name of the association, if any, in whose name or upon whose behalf the solicitation is made.

(b) A statement as to whether the contribution solicited is to be applied for the general purposes of such association, if any, or for specific purposes, and if for specific purposes the nature thereof shall be clearly stated.

(c) A statement that the Information Card, issued by the Department, was presented to the person making the contribution for his perusal prior to receipt by the solicitor of the contribution receipted for.

Provided, however, that no receipt need be given or tendered if donation of money is made by placing of the same in a locked receptacle, of a kind previously approved by the Board, in such manner that it is impracticable to ascertain either the amount donated or the name of the donor, and if an inscription shall be conspicuously attached to such receptacle containing in legible writing a copy of such Information Card issued by the Department

and the statement required to be set forth in the receipt hereinbefore in this Section referred to, except the statements regarding such information card, and if such receptacle bears a number or other mark of identification, and if a written list showing by number the location or name of the solicitor in charge of each receptacle, if there be more than one such receptacle shall have been previously filed with the Department. Provided, further, that no receipt need be given for any donation of money in an amount less than $1.00.

Sec. 44.16. Certain Provisions not Applicable, When:

The provisions of this Article, except Sections 44.01 and 44.04, shall not be applicable to any solicitation made upon premises owned or occupied by the association upon whose behalf such solicitation is made, nor to any solicitation for the relief of any individual specified by name at the time of the solicitation where the solicitor represents in each case that the entire amount collected, without any deduction whatever, shall be turned over to the named beneficiary, nor shall they be applicable to any association soliciting contribution solely from persons who are members thereof at the time of such solicitation, nor shall they be applicable to solicitations made solely for evangelical, missionary or religious purposes. Provided, however, that in any case where it shall come to the attention of the Board that any solicitation has been or is being or intended to be made for evangelical, missionary or religious purposes but in such manner as in the opinion of the Board is calculated to give or may give the impression to the person or persons solicited in any such solicitation or to the public that the purpose of such solicitation is either in whole or in part charitable, then the Board, if in its

opinion the public interest will be subserved thereby, shall investigate the matter of such solicitation and give publicity to its findings thereon in such manner as it may deem best to advise the public of the facts of the case.

Sec. 44.17. Soliciting from Vehicles:

No person shall park or stand any vehicle on any street within the Central Traffic District, as said district is defined in Section 80.00, for the purpose of soliciting funds to any charitable institution, or otherwise.

Sec. 44.18. (Added by Ordinance No. 80,920, approved March 1, 1939.) Telephone Solicitations:

(a) No person shall for pecuniary compensation or consideration conduct or make any solicitation by telephone for or on behalf of any actual or purported charitable use, purpose, association, corporation or institution.

(b) The provisions of Subsection (a) hereof shall not apply to any communication by telephone between persons personally known to each other.

Sec. 44.19. (Added by Ordinance No. 80.920, approved March 1, 1939.)

(1) Promoters.

No promoter shall in any manner whatsoever, solicit within the City of Los Angeles any contribution for any actual or purported charitable use, purpose, association, corporation or institution without license from the Board so to do.

(2) Application.

To obtain such license, such promoter shall make and file with the Board an application therefor in writing. In

such application, the applicant shall set forth, in addition to such information as may be required by the Board:

(a) The name and address of the applicant, and if such applicant be a corporation, the name and address of each of its managing officers and agents, and if it be an unincorporated association, firm or partnership, the name and address of each member of such unincorporated association, firm or partnership;

(b) A succinct statement of facts showing that the applicant, if not a corporation or an unincorporated firm, association or partnership, is of good character and reputation, or if the applicant be a corporation that each of its managing officers and agents is of good character and reputation, or if the applicant be an unincorporated association, firm or partnership, that each of its members is of good character and reputation.

(c) The general plan, character and method in or by which applicant proposes to conduct its or his business as a promoter.

(3) Bond.

(a) (As amended by Ordinance No. 81,618, approved Sept. 3, 1939.) At the time of so filing with the Board an application for such license the applicant shall file and thereafter maintain with the Board a good and sufficient bond in the aggregate sum of Two Thousand ($2,000) Dollars running to the City of Los Angeles for the use and benefit of interested persons and parties, executed by the applicant and by two or more responsible sureties, or a surety company authorized to do business in the State of California, to be approved by the Board. The total aggregate liability on said bond shall be limited to the payment of Two Thousand ($2,000) Dollars. Said bond

shall be conditioned upon the strict compliance, by the Principal, with the provisions of this Article and the payment of any direct pecuniary loss sustained, through any act of grand or petty theft on the part of the Principal, by any donor or by any person on whose behalf the funds or personal property were solicited or received by the Principal.

(b) Said bond shall remain in force and effect until said bond and undertakings in the solicitation of contributions by the promoter is cancelled by the sureties. The sureties may cancel said bond and be relieved of further liability thereunder by delivering thirty days' written notice to the Board. Such cancellation shall not affect any liability incurred or accrued thereunder prior to the termination of said thirty (30) day period.

(c) Any person who sustains any injury covered by said bond, may in addition to any other remedy that he may have, bring an action in his own name upon said bond for the recovery of any damage sustained by him.

(d) Upon such action being commenced, such bond shall not be void upon first recovery thereon, but may be sued upon from time to time until the whole of such penalty shall be exhausted. The Board may, in its discretion, require the filing of a new bond, and immediately upon the recovery in any action on such bond, and upon failure to file the same within ten (10) days in either case, the Board shall forthwith suspend such promoter's license to solicit.

(e) The time within which any action may be brought against a surety upon any bond filed hereunder may, by express provision of the bond to that effect, be limited to a period of two (2) years from and after the discovery,

by the person aggrieved, of the act or default complained of.

(4) Fee.

For filing such application the applicant shall pay a fee of $25.00 to the Board.

(5) Investigation.

The Board shall examine such application and shall make such further investigation of the applicant and its or his affairs as the Board shall deem advisable. If from such examination the Board shall be satisfied:

(a) That the applicant is of good character and reputation,

or

That every managing officer or agent of the applicant if the applicant is a corporation, is of good character and reputation, or if the applicant is an unincorporated association, firm or partnership, each member thereof is of good character and reputation.

(b) That applicant has sufficient financial responsibility to carry out the obligations incident to any solicitation such applicant may make within the City of Los Angeles as such promoter and that all of the statements made in such application are and each of them is true and that neither the applicant nor any officer, agent or member of the applicant has violated any of the provisions of this Article or has engaged in any fraudulent transaction or enterprise, and that the applicant intends to conduct its business fairly and honestly, the Board shall issue to the applicant a license to solicit as a promoter within the City of Los Angeles, contributions; otherwise, the Board shall

deny the application and refuse to issue a license, and shall notify the applicant of the decision of the Board.

Provided, however, that if the only ground for such refusal or denial is such that it does not substantially affect applicant's honesty and integrity and if the inability of the applicant to meet any requirement will not in any way interfere with a proper performance by the applicant of his duties as such promoter, the Board may, in its discretion, waive such ground and grant the application: this proviso relates only to paragraphs (a) and (b) of this subsection.

(6) Revocation.

All licenses issued hereunder shall be subject to the condition that the applicant thereafter shall cease and desist from acting as a promoter within said City of Los Angeles when ordered so to do by the Board if the Board finds after a hearing, upon notice as provided in Section 22.02 of this Code, that any act or omission of such promoter or his agents or employees in making any solicitation or in the conduct of the business of promoter within the City of Los Angeles is unfair, unjust, inequitable or fraudulent. The Board must suspend or revoke any such license if, after hearing upon notice, the Board shall find the existence of any of the grounds hereinabove enumerated for the denial of an application for a promoter's license; provided, however, that such suspension or revocation shall be discretionary with the Board if the only ground for such revocation is such that it does not affect the licensee's honesty and integrity, or his ability properly to perform his duties as a promoter.

(7) Termination.

Every such license shall terminate or expire at the end of the year terminating on the 30th day of June in which such license is issued.

(8) Funds.

No promoter shall commingle any contribution with the promoter's own funds or property, or fail at any time to maintain and keep all contributions separate and apart from the promoter's own funds or property.

(q) (Added by Ordinance No. 81,618, approved Sept. 15, 1939.) Solicitors:

(a) It shall be unlawful for any promoter to cause or permit any person for pecuniary compensation or consideration received or to be received by such person to solicit or receive on his behalf or at his instigation, under his direction or control or in his employment, any contribution unless such person shall be registered as a solicitor by the Board.

(b) No person shall be so registered as a solicitor unless he shall first appear personally before the Board and furnish satisfactory proof that he is a person of good moral character, that his reputation for honesty is good, and unless he first file with the Board, and thereafter maintain a bond satisfactory to the Board in the sum of Five Hundred ($500.00) dollars, conditioned for the payment of any direct pecuniary loss which may be sustained by the promoter, by any donee, or by any person on whose behalf any contribution was solicited or received, through any act of grand or petty theft, committed by such person.

(c) The provisions of paragraphs (b), (c), (d) and (e) of subsection (3) above shall apply to bonds filed pursuant to this subsection.

(d) The Board shall collect a fee of One Dollar ($1.00) for each such registration.

(e) The registrant must notify the Board in writing of any change of address and if the registrant be employed or engaged by more than one promoter, he must inform the Board in writing of such fact and of any subsequent termination or change of employment.

PAWN BROKERS—SECOND HAND DEALERS

L. A. Municipal Code—Ord. No. 77,000

As Amended to and Including Ordinance No. 84,732

Sec. 24.01. Pawn Brokers, Second Hand Dealers, Junk Dealers, Collectors:

(a) (As amended by Ordinance No. 69,314, approved March 3, 1938.)

Definitions. For the purpose of this Section the following words shall mean:

"Junk Dealer" shall mean a person having a fixed place of business in this City who goes from house to house or from place to place gathering, collecting, buying, selling or otherwise dealing in any old rags, sacks, bottles, cans, paper, metal or other articles commonly known as junk.

"Junk Collector" shall mean a person having a fixed place of business in this City and engaging in, conducting, managing or carrying on the business of buying, selling or otherwise dealing in, either at wholesale or retail any old rags, sacks, bottles, cans, paper, metal or other articles commonly known as junk.

"Pawnbroker" shall mean a person engaged in, conducting, managing or carrying on the business of pawnbroking, or the business of loaning money for himself or for

any other person upon personal property, or the business of purchasing articles of personal property and reselling or agreeing to resell such articles to the vendors or their assignees at prices agreed upon at or before the time of such purchase.

"Pawn Shops" shall mean any room, store, or place in which the business of a pawnbroker is carried on or conducted.

"Secondhand Dealer" shall mean a person engaging in, conducting, managing or carrying on the business of buying, selling or otherwise dealing in secondhand goods, wares or merchandise.

None of the provisions of this Section shall apply to auto wreckers, dealers in used motor vehicles, or to secondhand book dealers.

(Added by Ordinance No. 83,898, approved December 26, 1940.) "Trade-ins"—Tires and Batteries. The acceptance, sale or disposal of used automobile tires or automobile batteries taken in part payment for new tires or batteries shall not be deemed to constitute the doing of any business defined in this subsection.

(b) Permit Required. No person shall engage in, conduct, manage, carry on or deal in any business mentioned in subsection "a" of this Section without first applying for and receiving a written permit from the Board as hereinafter provided.

(c) Requisites of Permits.

(1) Persons desiring to obtain a permit to conduct, manage or deal in any business mentioned in subsection "a" of this Section shall file an application in writing with the Board specifying by street and number the place

where such business is proposed to be conducted or carried on; junk collectors having no fixed place of business shall specify in such application their residence by street number. The application shall be signed by the applicant and shall contain his residence address.

(2) Before receiving an application for any permit the Board shall require the payment of such fees as are hereafter specified.

(3) Upon receipt of such application the Board shall cause to be investigated the business of the applicant and location at which applicant proposes to engage in business as specified in said application. Thereafter the Board may issue a permit to the applicant which shall be effective for the remaining portion of the current year.

(4) Persons operating under the provisions of this Section shall be required to secure an annual renewal of such permit commencing January 1st of the succeeding year in which such permit was granted.

(5) No person holding a permit to conduct, manage, carry on or deal in any business mentioned in subsection "a" of this Section shall buy, sell or otherwise deal in secondhand jewelry, precious stones, precious metals (including old gold), watches or other similar secondhand merchandise without first applying for and receiving a special permit therefor from the Board in the manner provided in this Section for securing ordinary permits.

(d) Fees. The Board shall charge the following fees:

(1) Applications for permits other than provided for in this subsection shall pay the sum provided in Section 22.10;

(2) Applications for special permits, the sum of $50.00;

(3) Applications for annual permit renewal, the sum of $25.00;

(4) Applications for changing location of place of business for which a permit has been granted, the sum of $10.00;

(5) Change of ownership, the sum of $10.00, to be applicable only in cases where the new owner is already operating under a permit issued pursuant to provisions of this Section.

(e) Compliance with Laws:

(1) The Board shall not grant any permit provided for in this Section to persons who fail, refuse or neglect to comply with the laws and ordinances relating to and regulating the business for which such permit is sought.

(2) Persons applying for or obtaining permits under the provisions of this Section shall comply with the provisions of this Section.

(f) Revocation of Permits. Any permit issued under the provisions of this Section may be revoked or suspended upon the grounds provided for in this Section:

(1) Grounds. If persons holding permits under the provisions of this Section shall violate any of the provisions of this Section or any provision of any other ordinance, or any law relating to or regulating any such business, or shall conduct or carry on such business in an unlawful manner, the Board, in addition to any other penalties provided by this Code, shall revoke such permit issued to such person;

(2) Procedure. Permits granted pursuant to this Section shall be revoked only in the manner provided in Section 22.02 of this Code;

(3) Reissuance of Revoked Permit. No permit shall be granted to any person to conduct, manage, carry on or deal in any business mentioned in subsection "a" of this Section whose permit has been revoked by the Board until six (6) months have elapsed after such revocation.

(g) Report of Purchases.

(1) Persons described in subsection "a" of this Section shall secure blank report forms from the Chief of Police. Such reports shall be made out and delivered to the Chief of Police each day before 10 A. M. and shall contain the following data:

(a) A full, true and complete report of all goods, wares, merchandise or things received on deposit, pledged, purchased or received during the day preceding the filing of such report.

(b) The hour of the day such article was received, pledged or purchased.

(c) The true name and address of the party making the sale, delivery or pledge as nearly as the same is known or can be ascertained by such person together with a description of such party which shall include his height, age, sex, *completion*, style of dress, color of mustache, if any, and if lacking, such fact shall be noted.

(d) The number of the pawn ticket if a pledge is involved, and the amount loaned or pledged.

(e) Each article pledged, received or purchased shall be described. If such article is engraved or contains any settings, the description thereof shall include such number, figure, word or initial engraved thereon and shall show the kind and number of settings.

(2) Such blank report forms shall bear a caption providing blank spaces in which shall be written or printed, the date of such report, the name and place of business of the person making the same and the hour of day when the same is received by the Chief of Police. Such forms shall be so printed and subdivided as to contain spaces with proper captions for the information required by the provisions of this subsection. A copy of this Section shall be printed upon the back of each such blank form.

(3) Every junk dealer or persons engaged in the business of purchasing scrap metals for the purpose of reselling, smelting or refining such metal must comply with provisions of subdivision (1) of this subsection, except that where purchases are made from a junk collector in lieu of the description required in subsection "1(c)" of this subsection the true name and city license number of such junk collector shall be sufficient.

(h) Record of Purchases. Persons defined in subsection "a" of this Section shall keep a complete record of all goods, wares, merchandise and all things pledged to or purchased or received by him, which record shall contain all of the matters required to be shown in the reports referred to and described in subsection "g" of this Section. Such records of all articles pledged, purchased or received by such persons shall be open at all times during business hours to the inspection of any member of the Police Department.

(i) Filing of Reports. The Chief of Police shall file in a secure place in his office all reports and records received pursuant to the terms of this Section, and the same shall be open to inspection only by members of the Police Department or upon an order of a court of competent

jurisdiction made for that purpose. Every report and record required by the terms of this Section to be filed or kept shall be written or printed in a clear and legible manner entirely in the English language.

(j) Signs. Persons defined in subsection "a" of this Section shall maintain on the premises where said business is located, a sign plainly printed in the English language of sufficient size so that the same may be easy to read from the sidewalk in front of said place of business. Such sign shall state the business in which such person is engaged. If said business is located in an office building the sign shall be placed on the door of said office. If the business is located in a department of any building the sign shall be placed at the entrance to said department.

(k) Sale of Goods by Dealers.

(1) Pawnbrokers or secondhand dealers shall not sell or otherwise dispose of any article or thing within twenty-one (21) days after such article or thing has been purchased or received by such pawnbroker or secondhand dealer.

(2) Junk dealers or junk collectors shall not sell or otherwise dispose of any article or thing within three (3) days after such article or thing has been purchased or received by such junk dealer or junk collector.

(3) Junk dealers or other persons engaged in the business of purchasing scrap metals for the purpose of reselling, smelting or refining the same, shall retain and keep in a separate place on their premises the entire purchase of each day. Each day's purchase shall be kept in such place in its original condition for a period of three (3) days after the purchase or receipt thereof, and shall

at all times be open to the inspection of the Police Department.

(1) (As amended by Ord. No. 87,342, approved Jan. 21, 1943)

Hours of Business. No person operating, managing, or carrying on any business defined in Subsection (a) hereof shall accept any pledge, or loan money upon personal property, or purchase or receive any article, or carry on or transact such business in any manner during the hours or days hereinafter specified, nor shall any person carry on or transact any business of whatever character, or buy or sell any article new or used, at any place of business for which a junk dealer's permit, a pawnbroker's or pawnshop permit, or a second-hand dealer's permit is issued, during any of the following hours or days, to-wit:

(1) Between 6:00 o'clock P. M. and 8:00 o'clock A. M. on any day from Monday to Friday, inclusive.

(2) Between 7:00 o'clock P. M. Saturday and 8:00 o'clock A. M. of the following Monday, except, however, that any such place of business may be kept open between 7:00 o'clock P. M. and 9:00 o'clock P. M. on Saturday, provided that the only business done therein during such overtime hours be that of selling goods, wares and merchandise or other personal property;

(3) On any of the following holidays: New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, and Christmas;

Except, however, that from December 14th to December 24th inclusive, excluding Sundays, any such place of business may be kept open until 10:00 P. M., provided the only business done therein during such overtime hours

be that of selling goods, wares and merchandise, or other personal property.

(m) Overlapping Businesses. If any person shall engage in, conduct, manage or carry on at the same time more than one of the businesses defined in subsection "a" of this Section such person shall be deemed to be engaging in, conducting, and carrying on each such business separately and apart from the other business; and such person shall comply in all respects with the provisions of this Section relating to such business and no person shall fail, refuse or neglect otherwise so to do.

(n) Compliance with Section. No person engaging in, conducting, managing or carrying on any of the businesses defined in subsection "a" of this Section shall fail, refuse or neglect to file any report in the form, in the manner, at the time and otherwise in all respects in accordance with the requirements of this Section; or fail, refuse or neglect to keep records in the form and manner required by this Section; or fail, refuse or neglect to exhibit to a member of the Police Department immediately upon demand for inspection, any record of any goods, wares, merchandise, articles or things pledged to, or purchased or received by such person.

(σ) Exemptions.

(1) (As amended by Ord. No. 82,638, appr. Apr. 3, 1940)

The provisions of subsection (g) shall not apply to the receipt or sale of a secondhand article by person who receives or purchases such article from any other person when such other person has made the required report to the Chief of Police and shall have held the articles for the length of time as provided in subsection (k) hereof.

(2) The provisions of subsection (g), (h), and (k) of this Section shall not apply to the purchase or sale by junk dealers or junk collectors of any rags, bottles, other than milk or cream bottles, secondhand sacks or bags, other than cement sacks or bags, barrels, cans, shoes, lamps, stoves or household furniture with the exception of all musical instruments, typewriters, accounting machines, adding machines, check writing machines, comptometers or other similar equipment or the purchase or sale of sacks, bags, or rags other than cement sacks or bags.

(p) (Added by Ord. No. 83,646, approved Nov. 18, 1940) Claims to Possession of Stolen Property.

(1) In all cases where a claim is made to property pawned with or sold to a person claiming to be the owner thereof and asserting that the property was stolen, the Board shall, after a hearing upon notice, determine the validity of such claim and the immediate disposition which should be made as to the possession of the claimed property, as hereinafter provided.

(2) If the Board shall determine that such property was stolen, that the claimant is the owner thereof, and that there is no collusion between the claimant and the person by whom such property was stolen, the Board shall direct that such property be returned forthwith to the claimant without compensation of any kind being paid therefor.

(3) In the event such direction be disobeyed, the permit under which such pawnbroker, secondhand dealer, junk collector or junk dealer is permitted to conduct his said business may be revoked or suspended by the Board without further hearing.

(4) The Board may designate any member of the Police Department to hear the evidence at any or all hearings that may be held hereunder, and to report his findings thereon to the Board; but in all cases, the Board shall determine the disposition of the property.

(5) If, prior to the determination by the Board upon any claim made hereunder, an action at law is brought by or against the person in possesion of the property to establish the ownership of, or the right to possession of, the property, the Board shall upon notice thereof suspend proceedings upon the claim.

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IN THE

Supreme Court of the United States

October Term, 1946

No. 103

THE GOSPEL ARMY, a corporation,

Appellant,

vs.

THE CITY OF LOS ANGELES, the BOARD OF SOCIAL SERVICE COMMISSIONERS, DEPARTMENT OF SOCIAL SERVICE, DAN O. HOYE, City Controller,

Appellees.

APPELLANT'S REPLY TO APPELLEES' BRIEF.

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SUBJECT INDEX

PAGE

Point I. The contention set forth under "Point I" of appellees' brief have not been sustained therein..... 5

Point II. Appellees' brief "Point II" fails to sustain the claim that the Los Angeles City ordinance is a valid regulatory law properly exercising the police power..... 11

Point III. The provisions of the city ordinance regulating second-hand and junk dealers is unconstitutional and void..... 20

Point IV. Appellees' elucidation of the provisions of Ordinance No. 77,000 is incomplete and inadequate..... 24

TABLE OF AUTHORITIES CITED

CASES

	PAGE
Dart, In re, 172 Cal. 47	3, 5, 13, 21, 22
Pana Refining Company v. Ryan, 292 U. S. 388, 79 L. Ed. 449	25, 26
Murdock v. Pennsylvania, 319 U. S. 104, 87 L. Ed. 1292	14, 21
Rosenthal v. People of the State of New York, 226 U. S. 260	21
Schneider v. Irvington, 308 U. S. 161	24, 26
Thomas v. Collins, 323 U. S. 516	17, 18
West Virginia State Board v. Barnette, 319 U. S. 624	18

STATUTES

Charities and Relief Ordinance, Sec. 9 (a)	27
Charities and Relief Ordinance, Sec. 44.02 (c)	26, 29
Charities and Relief Ordinance, Sec. 44.03	25, 26, 29
Charities and Relief Ordinance, Sec. 44.04	29
Charities and Relief Ordinance, Sec. 44.05	10, 26, 27, 28
Charities and Relief Ordinance, Sec. 44.06	25, 27, 28
Charities and Relief Ordinance, Sec. 44.07	29
Charities and Relief Ordinance, Sec. 44.08	29
Charities and Relief Ordinance, Sec. 44.10	29
Charities and Relief Ordinance, Sec. 44.11	29
Charities and Relief Ordinance, Sec. 44.12	28, 29
Charities and Relief Ordinance, Sec. 44.14	29
Charities and Relief Ordinance, Sec. 44.15	29
Charities and Relief Ordinance, Sec. 44.18	27
Charities and Relief Ordinance, Sec. 44.19	10, 13, 21, 25
Los Angeles Municipal Code, Ordinance No. 77,000:	
Sec. 21.100 (c)	8
Sec. 21.201 (a)	6, 7
Sec. 24.01	2, 20, 21
Sec. 44.16	7, 25
United States Constitution, Fourteenth Amendment	20

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Appellees.

APPELLANT'S REPLY TO APPELLEES' BRIEF.

Appellant deems it advisable to reply, as briefly as possible, to appellees' recently filed brief.*

Certain portions of appellees' brief call the attention of this Court to new matters not included in the Transcript of Record or the Statement of Jurisdiction or other documents within the files of this appealed case.

Omission to challenge the verity of such matters seems proper and probably necessary in view of the apparent

*For brevity the following abbreviations are used herein: "T. R." means "Transcript of Record"; "Stat. of Jur." stands for "Statement of Jurisdiction"; "App. Br." means "Appellees' Brief"; "App. Op. Br." refers to "Appellant's Opening Brief," and "App." stands for the "Appendix" to appellant's opening brief.

purpose of the Rules of this Court to firmly restrict consideration of the issues to such records.

The new matters to which reference has been made are:

1. Under the caption, "Statement of the Case," the alleged information said to be revealed in "the files of the County Clerk of Los Angeles County," and the argument based thereon, comprising a portion of page 2 and all of page 3 of said brief.

2. Assertions contrary to the plain language of the ordinance which shows that Section 24.01 was added by amendment to Ordinance 77,000; said information concerns the alleged separation in the City Municipal Code of "Section 24.01" from "Ord. No. 77,000" and alleged separation in the administration of said "Section 24.01" and "Ord. No. 77,000" (App. Br. p. 7), all of which is extraneous of the Record and mere unsworn statements of counsel, and will not be discussed or directly controverted, although it will appear, in the presentation of another matter, by the testimony of the manager of the Department that said unsworn statements are erroneous.

3. The appendix to appellees' brief consists in part of three provisions selected by appellees' counsel from as many purported city ordinances, none of which were considered by the State Supreme Court or brought to its attention by either party, and none of which are within the record in this appeal. Also, said appendix contains purported copies of the ordi-

nance involved in the *Dart* case and an alleged copy of a resolution to enforce said purported ordinance. The opinion of the *Dart* case quotes the pertinent parts of two ordinances and did not consider the alleged resolution, and appellant's counsel knows not whether it is correctly set forth in said appendix.

4. *Appellees' "Point IV"* (App. Br. p. 39 *et seq.*), consists of a defense of the validity of one of the alleged Los Angeles City ordinances to be found among those set forth in the appendix to appellees' brief.

Opposing counsel testifies therein as to the contents of "Public Records of the Social Service Department of the City" and what they are said to "disclose." It seems hardly possible that he can be unaware of the impropriety of this procedure, and it is believed that the opposing party is not called upon to refute or discuss any portion of said "Point IV."

5. Throughout the discussion of sections of Ordinance 77,000 in appellees' brief (pp. 20-34), improper statements of facts nowhere contained in any document before this Court are made.

They are identified as follows:

(a) Page 20, concerning alleged millions of dollars contributed yearly to charity in Los Angeles.

(b) Page 21, concerning the percentage of Information Cards, requiring correction as shown by Department records.

(c) Page 2, unsworn assertions beginning with the words: "Subsection (f) was inserted."

(d) Page 24, the assertion, in substance that the present case presents the "first known challenges" to Section 44.05, within a period of 30 years.

(e) Page 28, a statement similar to "(d)" above, with respect to challenges to Section 44.14.

(f) Page 32, assertions concerning the thrift of churches, etc., under Ordinance 77,000, public faith therein, alleged statistics as to millions donated, and "vast sums" given to build churches, but not reported to the commission, etc.

(g) Page 32, depicting an appalling situation in Los Angeles in which opposing counsel aver that any person, however corrupt, was free to "ply his nefarious activities unhindered," before the instant ordinance and its immediate predecessor were enacted.

All of the foregoing assertions and alleged records and statistics may or may not be true and authentic. Appellant knows not, but doubts many of them, and insists that they have no proper place in appellees' brief, and cannot be considered in determining the merits of this case.

POINT I.

The Contention Set Forth Under "Point I" of Appellees' Brief Have Not Been Sustained Therein.

If, as appellees' brief states (p. 11), an application was made by appellant to be relieved from payment of a "revenue license tax," this merely goes to show that the City of Los Angeles places no limitation on its exactions, for a revenue tax has not the benefit of a regulating law by which the police power is exercised.

There is nothing in the record to show that the tax mentioned by appellee was a "revenue license tax," but during the trial, Ferris Miller, the manager of the Department, testified that appellant had, upon one occasion, applied for a license which relieves "a charitable organization" from paying anything. [T. R. p. 72.] Apparently this is done under an ordinance other than Ordinance 77,000, which provides a covert revenue to circumvent and shortcut the Charities and Relief Ordinance, which is even more obviously discriminatory than the endorsement provisions of the latter.

It is plain, therefore, according to this testimony, assuming it to be the alleged revenue ordinance, it fixes no rule by which the department may decide whether "they (applicants) qualify for the exempt license or pay license," and permits this determination to be discretionary with the commission. [T. R. p. 70.]

Under the decision in *In re Darte*, 172 Cal. 47, such a law as applied to charitable organizations is a violation of the due process guarantee and is null and void. Mr. Ferris testified that appellant's application was denied because the Department refused to approve it. [T. R. p. 72.]

He testified that although the application for a free license is made to the City Clerk, such applications are referred to the Social Service Department, and is "granted upon our approval." [T. R. pp. 72,73.]

The transcript shows the following question by appellant's counsel, and Mr. Ferris' answer:

> "Is there any fixed set of rules that show the department whether they quality for the exempt license or pay license, or is that a matter of discretion on your part? When I say 'yours,' the Commission.
>
> "A. The Commission has established a regulation which is not a part of the ordinance, but according to the City Attorney's opinion they are entitled to establish certain regulations and they have said a charity shall apply at least 50 percent of the income to charitable purposes. Of every dollar 50 cents should go to the charitable cause and not eaten up in expense." [T. R. p. 73.]

However, the witness was in error. The ordinance contains a fixed rule.

Appellees' brief (p. 38), is inaccurate and misleading in stating that the revenue ordinance "provides that charitable organizations, etc., which deal in secondhand articles, are exempt from the tax if the business is not for private gain."

The words "is not for private gain" are not within this exemption provision. The section reads:

> "Sec. 21.201. (a) The provisions of this Article shall not be construed to require the payment of any license fee to operate or carry on the functions of any charitable or religious institution, organiza-

tion or association organized for charitable or religious purposes and conducted solely for such purposes . . . ." [See App. to Appellee's Brief p. 6.]

Further provisions in the same section use the term "for private gain" but they refer to "teaching, preaching," etc., and to concerts, lectures, etc., only.

The revenue ordinance uses the same language, as does Section 44.16, [App. p. 12], of Ordinance 77,000 in respect to exempting organizations which solicit and dispose of goods for religious purposes, to-wit, the proceeds must be "solely for a religious purpose" under both laws, although Section 21.201 applies that test to charities, and in respect to such activity, is more objectionable than Ordinance 77,000, which only applies it to religion.

However, "the wicked flee when no man pursueth."

Appellant has not heretofore questioned the constitutionality of the alleged revenue ordinance; it has never been mentioned in appellees' brief or appellant's briefs in the State courts. The opinions of the State Supreme Court do not mention it.

Yet appellees' brief, "Point IV" (pp. 39-42), is devoted to an attempt to sustain the validity of said alleged revenue ordinance.

Appellant has heretofore questioned the right of the Department to adopt a rule which requires that 50 per cent of donations received must be used for a religious purpose or a charitable purpose, after all expenses for solicitations and other necessary matters have been deducted.

Yet, appellant has always claimed and still does, that in creating this rule, the Department functioned under the

provisions of Ordinance 77,000, and this is consistent with the testimony of Manager Ferris Miller.

Also, "(c)" of Section 21.100, expressly provides that all applications by charitable or religious organizations for exemptions, that is for free licenses, shall be "forwarded to the Social Service Commissioners" who shall determine whether or not the free license shall be granted.

Hence, the revenue ordinance is a false quantity in this case. It merely provides a different procedure by which a license to solicit may be obtained but places all applications therefor in the hands of the Department.

But this alien ordinance—alien as far as this case is concerned,—reveals a settled policy of the city to require that both charitable and religious activities be licensed and subjected to all regulations appropriate to lawful or even near-unlawful businesses, such as pawnbrokers and junk dealers.

Appellees' brief misconstrues the testimony of the city's witness Ferris Miller, Manager and Secretary of the Social Service Department of Los Angeles.

Ferris testified that "the ordinance differentiates between the two"—charity and a religious activity.

He said:

> "It is true that religious organizations do charitable work *and it is up to the jurisdiction;* even some churches do that work. *They solicit outside of their own walls.*" (Emphasis added.)

That, by the statement, "it is up to the jurisdiction," Mr. Miller referred to the Department of which he was manager, is shown by his testimony which followed, in which

he said that the Commission has the final word in deciding whether an organization soliciting donations as a religious activity or is a charitable or promotional affair; as to which power to determine, he said, "Yes, that is within their power," to "say yes or no." [T. R. p. 70.]

Mr. Miller testified that, with reference to the Gospel Army and Mrs. Colbert, the manager of its store where donated articles were sold, that he had written letters which were shown him dated August 6th and 28th asking Mrs. Colbert to "file an application for a license," and "one of my assistants also had a conversation with her regarding the same subject"; that the "Department asked the Gospel Army to comply with the solicitation." [T. R. pp. 63, 64.]

He testified that the Commission did not grant a permit to Mrs. Colbert after she filed a Notice of Intention, and one reason for its action was that she "failed to post a bond" [T. R. p. 69], and that the attitude of the Commission in reference to "the collection of salvaged personal property" was that Mrs. Colbert "is in the category of a promoter," and she "must have a license" and "post a bond," the license fee being $25.00 and the "surety bond is for $2000.00," and she must file reports "to the Social Service." [T. R. p. 70.]

Therefore, appellees' brief is misleading when it declares:

> "The record fails to show that any person requested the appellant to secure a second-hand dealer's license or a junk dealer's license from the Police Commission, or threatened to enforce such provisions of law against the appellant."

Again said brief is misleading (p. 10) when it asseverates:

> "It follows that the only issue which can be raised here is the business or commercial rights of the corporation, and no question of infringement of religious activity is involved."

Here, at the trial, the city's witness and manager of the Department plainly states that it had "asked" Mrs. Colbert to apply for a "promoter's license," which required her to pay the fee and post the bond, as provided by Section 44.19 of the Charities and Relief Ordinance.

He stated plainly that the Department, just as the State Supreme Court held concerning the ordinance, followed the ordinance and "differentiates between" charitable and religious activities and if the notice of intention shows that the activity includes charities, "the jurisdiction" has power to say "yes or no" and will say "no."

Appellees' brief thus engages in "double-talk" and the use of half-truths. It is true that no person requested the appellant to secure a second-hand dealer's license or a junk dealer's license from the Police Commission, but the Department and its manager Mr. Miller "requested" the Gospel Army and Mrs. Colbert that she file a Notice of Intention, with the Department (Ordinance, Sec. 44.05), without which the Department's manager said, the second-hand store could not be operated by her, and comply with "the solicitation," to-wit, the provisions of Ordinance 77,000 relating to solicitation, and all sections of which ordinance deal with the regulation of solicitation and are within the jurisdiction of the Department pursuant to Ordinance 77,000.

POINT II.

Appellees' Brief "Point II" Fails to Sustain the Claim That the Los Angeles City Ordinance Is a Valid Regulatory Law Properly Exercising the Police Power.

In applees' discussion of the subject set forth as "Point II" in their brief, a statement is made giving their understanding of appellant's contentions, which is quite at variance with the contentions which have been made by appellant.

Concerning the regulations which may lawfully be made of solicitations of donations to be used for charitable purposes, entirely divorced from religion, appellant has insisted that such regulations must not be unreasonable or unduly burdensome; that they must not be discriminatory or be administered under an administrative board which is empowered to discriminate on the basis of prejudice, bias or mere whimsy, and, hence, such regulations must not be vague or indefinite as to standards to govern their administration or leave decisions to the unrestrained discretion of administrative officers; appellant has urged that the regulations must be suited to the nature of the business regulated in order to be reasonable, and that therefore the principal provisions of the second-hand and junk dealer regulations are inapplicable and unreasonable as applied to a store maintained for charitable purposes which receives and disposes of donated goods only and buys nothing.

On the premises of these and kindred contentions, appellant has claimed and will urge that said regulations concerning the second-hand store and substantially all of the charities and relief ordinances are invalid; for ex-

ample, that many are unreasonable and unduly burdensome, some being practically prohibitive as to compliance therewith, so that all unendorsed charitable activities by persons or organizations are rendered impossible, and that no reasonable or fair or definite standard is provided to determine how or to whom endorsements may be dispensed.

It is implicit in these contentions that, contrary to appellees' brief, no claim is made that a charitable activity, engaged in by charitable but secular organizations or by individuals, are free from regulation.

It is equally clear, however, that there is no relationship or similarity between regulations which prevent spoiled food being fed to indigents, or diseased, germ-infected garments being handed out to clothe them, on one hand, and the provisions of Ordinance 77,000, which empowers the Department to spend weeks, months, years and forever in investigations, calls for information, more investigations and finally just plain failure to act upon an application for a permit or license, provisions for all of which unreasonable delays and restraints are made in said ordinance, which the opening brief points out.

It has been argued in appellant's opening brief that the Department is empowered to deny, through failure to act, the issuance of an Information Card, after the same has been applied for by a Notice of Intention to solicit.

The reporter's transcript in this case shows that this has actually occurred.

Mr. Miller, the Manager of the Department, said that no application of the Gospel Army "for any permit" had ever been denied during the period when he was the head

of the Department [T. R. p. 65], and that none had been granted. [T. R. p. 68.]

However, Miller testified that Mrs. Colbert filed "Notice of Intention" on behalf of the Gospel Army which was not granted. [T. R. p. 69.]

Apparently, although it was never formally denied, it was never granted, the practical effect was the same, because of the failure of the Commission to grant the application.

Therefore, as we view it, appellee's discussion set forth in pages 13 to 15, inclusive of their brief is wholly irrelevant, because in attempting to render the grounds urged by appellant for reversal of the State Supreme Court's decision absurd and legally impossible the situations and illustrations suggested distinguish themselves from the subject matter and regulations of the instant ordinance.

With reference to appellant's contentions concerning violations of the guarantee of religious freedom and exemptions from unlawful prior restraints upon the exercise of that right, appellant follows the pattern of *Ex parte Darte*, in that the right to continue to engage in religio-charitable activities are dependent upon the maintenance of the right of its solicitors and "promoter," Mrs. Colbert, the manager of its store, to exercise her right of religious freedom and to be exempt from such exactions and prior restraints as paying a flat license or revenue fee of $25.00 for a license, which is only good for a brief or indefinite period (Sec. 44.19, App. Op. Br. pp. 47-49) and posting a $2000.00 bond, and all of the other burdensome, unreasonable and arbitrary provisions of said Section 44.19.

In *Murdock v. Pennsylvania*, 319 U. S. 104, 87 L. Ed. 1292, this Court said:

> "It is plain that a religious organization needs funds to remain a going concern."

Again it said:

> "Those who can deprive religious groups of their colporteurs can take from them a part of the vital power of the press which has survived from the Revolution."

This truth necessarily results because the work done by the colporteur, the solicitor and the "promoter"—solicitor is vital to provide funds to not only sustain distribution of products of the press, but to support such religious activities as church services and church charities.

It is believed that no decision has thus far held that a religious or charitable organization has no standing in court to complain of injuries to it, caused by unlawful ordinances under which the activities of its solicitors or colporteurs are unreasonably restrained or barred.

The trial court found that appellant's store "is being conducted by plaintiff for the sale of and disposal of salvaged personal property donated and given to said plaintiff by the general public; the proceeds derived therefrom is used by plaintiff in furtherance of said religious organization."

Also, it found that plaintiff "is engaged exclusively in the promulgation, by literature and word of mouth, of its religious beliefs, by and through its auxiliaries, and in the procuring of donations in the form of money and articles of value in the prosecution of its religious activities." [T. R. p. 9.]

The trial court further found that the defendants (appellees herein) had, among other things, "notified and demanded of Plaintiff that it must pay . . . a license to operate the store of Plaintiff," [T. R. p. 9], and that unless defendants are enjoined "from doing the things hereinbefore mentioned . . . Plaintiff will suffer irreparable injury therefrom." [T. R. p. 10.]

The majority opinion of the State Supreme Court held that a finding of the trial court that Plaintiff's solicitors "engaged exclusively in religious activities" was in error, since, it is said, the evidence showed without conflict that plaintiff also engaged in charities, which under the city's ordinance was separated from religion. [T. R. p. 97.]

That this holding was erroneous is one of the grounds urged herein for reversal, since, appellant argues, an essential element of religion, namely, charity, cannot be carved out by legislative fiat.

However, the trial court's other findings of fact have never been challenged by appellees or the State Courts as not supported by the evidence.

The evidence showed that the demands of the defendants had been made on appellant and its employees through the Department of Social Service of which the witness, Ferris Miller, was manager, and he testified that

> "we require that the organization file a notice of intention to solicit. Then if there is in the arrangement some thing which indicates that a person has

been employed to conduct that solicitation for pay then an additional application must be made for a license to conduct such solicitation. That is what we have asked Mrs. Colbert to file which has not been filed."

Mr. Ferris Miller admitted that Mrs. Colbert would have been required to file a Notice of Intention and to post a bond, which is required of a promoter only, in order that appellant's Notice of Intention to solicit (Application for Permit) might be considered. [T. R. p. 69.]

Also, Mr. Ferris Miller said that, it was the attitude of the Commission that Mrs. Colbert "is in the category of a promoter" with reference to "this salvage store and the collection of salvaged personal property." [T. R. p. 70.]

It thus appears that appellant will suffer irreparable injury as the result of the requirements of the instant ordinance and the officers who administer it which violate their solicitor's and promoter's right to exercise their freedom of religion by engaging in the religious activity of solicitation for religious charities.

In the Dart proceeding, Dart, the solicitor and seller of donated articles, was the plaintiff, but the nature and rights of his employer, the Salvation Army, were considered and determined, for their rights were inseparably merged.

In the instant case, the Gospel Army is the plaintiff, but to safeguard its financial rights, which in turn rest upon the rights both secular and religious of its solicitor and promoter, the nature of their services and their said rights are inextricably involved and must be considered and determined.

Appellees' brief directs attention to *Thomas v. Collins*, 323 U. S. 516, by quoting one brief excerpt from the majority opinion and another from the concurring opinion of Mr. Justice Jackson. The relevancy of the latter is not pointed out and the excerpt from the Court's opinion sustains appellant's consistently urged claim that only a reasonable registration or identification requirement is permissible in the regulation of either religious or charitable activities.

Said pronouncement supports appellees' contentions only upon the premise that the nineteen sections containing scores of requirements, many of which are obviously time-consuming and burdensome, can be, through some type of logic not employed in the majority opinion of the State Supreme Court, shown to be a mere registration or identification ordinance of such character that the "mendicant minister" envisaged in the *Cantwell v. Connecticut* opinion, would not be prevented from his solicitations and preaching the Gospel.

However, it is important to note that the doctrine of the *Thomas v. Collins* decision places the burden on appellees to show that the danger which the ordinance involved would guard against is an "actual or impending" and a "grave" danger; that such danger is a "clear and present danger," and not merely one which may be justified by clear public interest, but which is only "threatened doubtfully or remotely."

The applicability of this doctrinaire in the instant case results because the right to the free exercise of religion is grouped in the First Amendment with the rights of freedom of speech and of the people to assemble, and the importance of this grouping and relationship is declared

in the *Thomas v. Collins* case opinion. Indeed, it is said "They are cognate rights."

Hence, plaintiff's promoter and solicitors occupy the position of Thomas in his haven, consisting of the rights of free speech and assembly, and the defenders of the instant ordinance are placed with the defenders of the constitutionality of the Texas law, which law was the essence of simplicity in its requirements as compared with Ordinance 77,000 herein.

The purpose of said ordinance, according to the State Supreme Court, is to protect against possible deception and fraud on the part of solicitors. [T. R. p. 93.] There is no hint in the opinion of that Court that this danger is "clear and present" or that it is a "grave" danger to the public interest, and Mr. Justice Carter's dissenting opinion shows that such is not the fact. [T. R. p. 100 *et seq.*]

In arguing that the ordinance whose validity is involved herein is valid as a permitted regulatory measure and a registration ordinance appellees' brief cites *West Virginia State Board v. Barnette*, 319 U. S. 624, at p. 639, as authority for the proposition that

> "The right to investigate connotes a right to protect the public against fraud and misrepresentation and even to prohibit solicitation of known embezzlers, as a '. . . restriction only to prevent grave and immediate danger to interests which the state may lawfully protect.'"

This citation is misleading and garbles and revamps the language and concept expressed by this Court's opinion, wherein the quoted words are used.

Nothing is said about protecting "the public against fraud and misrepresentation," and the term "right to investigate" was not used.

The following excerpt reveals the contrast between the quotation from appellee's brief and the opinion, partly quoted and partly cited:

> "The right of a state to regulate, for example, a public utility may well include, so far as the due process test is concerned, power to impose all of the restrictions which a legislature may have a 'rational basis' for adopting. But freedoms of speech and of the press, of assembly, and of worship may not be infringed upon such slender grounds.
>
> "They are susceptible of restriction only to prevent grave and immediate danger to interests which the state may lawfully protect."

Thus accurately quoted, we find a strong fundamental principle announced which itself challenges the validity of the entire plan of procedure and purpose of the instant ordinance, the purpose being as the majority opinion of the State Supreme Court said, to protect the public against fraud and misrepresentation, and Justice Carter's dissenting opinion clearly establishes, upon the basis of prior decisions of this Court and of reason, that there can be no "grave and immediate danger to interests which the state may lawfully protect" because the public is amply safeguarded from any fraud and misrepresentation which might result from solicitations for charity or religion by general laws of a punitive character and that appellant has priority of the constitutional rights involved over the exercise of the police power whose purpose is to prevent fraud and deception.

POINT III.

The Provisions of the City Ordinance Regulating Secondhand and Junk Dealers Is Unconstitutional and Void.

Under Point III of appellees' brief, they assert that they "make no claim that the evidence in the record would sustain a conclusion that appellant is 'engaged in the business' of secondhand or junk dealer or junk collector, regulated by Section 24.01 of the Los Angeles Municipal Code."

This constitutes a right-about-face from appellees' contention before the State Supreme Court. At that time in their opening brief, it was strenuously claimed that the secondhand store was a business and was subject to the provisions of Section 24.01, the Secondhand-Pawnbrokers Amendment to Ordinance No. 77,000, and argued that said provisions constitute a valid exercise of the police power. [T. R. pp. 24, 26, 82, 83.]

Appellees herein also contended in their brief filed in said State Court that the testimony of appellant's manager of its store indicated that provisions of the secondhand ordinance applied to said store. [T. R. p. 31.]

Appellees' closing brief in the same Court continued to argue that the secondhand store Section 24.01 was binding on the Gospel Army and that otherwise a religious organization could operate "poolhalls, cafes, or bars" and claim to be free of regulation. [T. R. p. 32.]

The State Supreme Court agreed with the city's contentions and held that the store was subject to said Section 24.01 and that none of its provisions violated any guarantee of the Fourteenth Amendment to the Federal Constitution. (Stat. of Jur., pp. 55, 56.)

Appellant has consistently claimed that the secondhand store is merely one of the religious activities of the Gospel Army and that the provisions of Section 24.01, as applied to such store, are "unreasonable and burdensome," as well as prior restraints upon the exercise of religious activities and religious freedom, relying upon *In re Dart*, 172 Cal. 47, and *Murdock v. Pennsylvania*, 319 U. S. 104. (Stat. of Jur., p. 27.)

Also appellant contended that its property rights in the secondhand store were infringed by said Section 24.01, and the store provides means for carrying on its religious and charitable activities, and that the defendant Board had classed Mrs. Colbert, the manager of said store, as a "promoter," and claimed the right to apply to her the provisions of Section 44.19 (Stat. of Jur., pp. 7-9) and other applicable provisions of Ordinance No. 77,000. (Stat. of Jur., p. 31.)

However, appellees still claim that appellant's store is subject to the provisions of Section 24.01, and rely upon *Rosenthal v. People of the State of New York*, 226 U. S. 260.

The mere citation of this case negatives appellees' assertion that they "do not claim that appellees are engaged in the business of a secondhand and junk dealer."

The *Rosenthal* case dealt with the validity of an ordinance similar to Section 24.01, as applied to such a store in which the business was buying and selling junk and secondhand goods of all kinds. The decision is entirely irrelevant as applied to a store dealing in donated articles and whose purpose is to support the religious and charitable activities of a religious organization.

Appellees dismiss and attempt to eliminate *In re Dart*, 172 Cal. 47, by the assertion that, as an authority supporting appellant's claim that the licensing provisions of the instant ordinance are invalid as applied to "persons engaged in the secondhand business, it suffices "to say that such statement is not in any manner supported by the record."

This treatment of the *Dart* case decision is similar to that accorded it before the State Supreme Court and the majority opinion disregards said decision.

Appellant trusts and expects that this Court will examine the *Dart* case opinion with the care which it deserves, especially since both dissenting opinions show that their authors regard the *Dart* case as decisive of the principal issues herein presented.

However, it is believed that in view of appellees' aforementioned assertion, the same calls for refutation by quoting from the opinion excerpts not contained in appellant's opening brief.

As to the charges against Dart, the opinion states:

> "Petitioner was arrested under two criminal complaints charging violations of these ordinances. By the first of these complaints, he was accused of soliciting 'alms, food, clothing, money and contributions . . . without first securing or having a permit or written certificate so to do from the Municipal Charities Commission.' By the second of these complaints, his crime was in 'selling and offering for sale clothing, household goods and other goods, wares, and merchandise which had been solicited and donated by charity and philanthropy without first obtaining or having a written permit so to do from the Municipal Charities Commission.'" (172 Cal., p. 49.)

The Court then recites the various activities in which the Salvation Army engaged, among which were: "It also maintains nine stores where secondhand clothing, furniture, rags, paper, and junk, are sold at low prices."

After reciting many demands made by the Charities Commission, the opinion states:

> "Always desirous of yielding obedience to the law, and of 'yielding to Caesar the things that are Caesar's,' the Salvation Army endeavored to comply with the exactions of the Charities Commission, but was unable to comply, with some of them without impairing its efficiency and integrity as an organized society for religio-charitable work. Failing to secure the permit, the Salvation Army continued this work. The petitioner is one of its officers. In the performance of his duties as such officer, and not otherwise, he has been subjected to these arrests and charged with these crimes."

Thus it appears that the questions directly presented were:

1. Was the requirement of the ordinance which made it an offense to solicit donations for charity without a permit invalid, where to secure the permit required the endorsement of the Commission?
2. Had the city the power to require that Dart secure a permit to sell goods in the secondhand store, where the ordinance delegated to the Commission power to endorse and relieve a charitable organization of the necessity of applying for a permit?

The opinion states:

> "The basic question remains: May a private charitable association be denied the right to fulfill the pur-

poses of its existence saving under a 'permit' from the authorities? We here use the term, 'private charity,' as meaning one not supported in whole or in part by State or Municipal funds." (172 Cal. at p. 52.)

Later in the opinion the question is answered in the negative, and it is said in substance that an affirmative answer "necessarily contains an assertion of power to prohibit or suppress vocations and occupations which, entirely aside from their religious character, are from a worldly point of view in and of themselves not only harmless but positively beneficial to humanity."

POINT IV.

Appellees' Elucidation of the Provisions of Ordinance No. 77,000 Is Incomplete and Inadequate.

Appellees' brief (p. 19) states that it is "well established that the validity of legislative acts is presumed," and indicate they desire the full benefit of this presumption.

In the instant case, in view of the nature of the challenges made to various provisions of the ordinance, the effect of the general presumptions, if any, is slight for as shown the dissenting opinion of Mr. Justice Carter [T. R. p. 100 *et seq.*], when a law is attacked as preventing or restricting the enjoyment of constitutional liberties, such presumptions do not prevail, but the Court is called upon "to appraise the substantiality of the reasons advanced in support of the regulations of the free enjoyment of the rights." (Quoting *Schneider v. Irvington*, 308 U. S. at p. 161.)

Also, as this Court asserted in *Panama Refining Company v. Ryan*, 292 N. S. 388, 79 L. Ed. 449:

> "No presumptions favorable to the validity of executive action attach where a legislative function is delegated, and, it is said, provision must be made for findings of such facts as the law makes requisite to action on the part of the non-legislative officer or board."

In the instant case we are dealing largely with delegated legislative functions. Examples are: The power to determine what information will "be of assistance to the public to determine the nature and trustworthiness of the purpose for which" any "solicitation is made." [Sec. 44.03 (4), App. p. 5.]

It is a delegated legislative function to decide what information, when supplied by an applicant for a permit to solicit, is not sufficient "for the public" concerning such matters as an agreement between the solicitor or promoter and the manager of a solicitation effort for some organization. [Sec. 44.06, App. p. 7.]

Another such function is to determine by what information "the public interest will be subserved" if given publicity concerning a solicitation intended for evangelical, missionary or religious purposes, but which is in part charitable. [Sec. 44.16, App. p. 16.]

To decide what "affairs" of an applicant for a promoter's license should be investigated, for the purpose of determining whether an application for a promoter's license should be granted or denied, is a legislative function. [Sec. 44.19, App. p. 16.]

These functions are all delegated to the appellee, Department of Social Service, with no standard provided for

their exercise and no requirement that findings be made to justify actions taken in their exercise.

No presumptions arise where such provisions or the acts of the non-legislative officer purportedly exercising such delegated functions are being reviewed judicially. (*Panama Ref. Co. v. Ryan, Schneider v. Irvington*, both *supra.)*

Appellees' brief (pp. 19 to 36) essays to refute the arguments of appellant by analysis of the ordinance involved and comments thereon.

The briefs of both parties have referred to the ordinance as set forth in the appendix to appellant's Opening Brief, which will be referred to by the abbreviation "App." herein.

The most noteworthy characteristic of said analysis and comments is the selection of ordinance sections and portions of sections whose validity appellant has not challenged to be held up as innocent and lawful and the scanty discussion a small fraction of those provisions which have been challenged.

Appellant has not attacked as unconstitutional subsection (c) of Section 44.02 [App. p. 3] erroneously referred to in appellees' brief as "(c)" of Section 44.03, not "(d)" of Section 44.02. (See App. Br. p. 20.)

Appellant has not claimed that a fee of one dollar for the first 25 cards or one cent for more is exorbitant [Sec. 44.02 (f), App. p. 4], as implied in appellees' brief (p. 23).

The validity of Section 44.05, subsection "(g)" [App. p. 6], has not been questioned. (App. Br. p. 23.)

Subsection (a) of Section 9 [App. p. 8] has not been challenged by appellant (see App. Br. p. 25), although subsection (b) thereof has been attacked by it upon grounds which appellee fails to mention. (App. Op. Br. p. 47 *et seq.*)

No one has challenged Section 44.18 [App. p. 13], which appellees' brief defends (p. 33).

Brief comments will suffice concerning appellees' defense of certain provisions which appellant claims are unconstitutional. As to the others, what is said in the Opening Brief will be relied upon.

Appellees' brief (p. 23), referring to Section 44.05, states "appellant fails to point to any provision which unfairly burdens one who wishes to solicit."

Opposing counsel overlook what is said in appellant's opening brief, page 56 *et seq.* and page 60 *et seq.* Also, on page 27, appellant "points to all of the provisions of Section 44.05 and assigns that they "constitute a burdensome bar" to the exercise of the right to engage in charitable and religious work.

Appellees assert that one reason for the requirement in Section 44.06 that the applicant must furnish any information in addition to that set forth in the Notice of Intention to Solicit (Application for Permit), which the Department may demand "within 48 hours after such request," is to save time and not interfere with the plans of the prospective petitioners.

The applicant is already a petitioner for a permit when the request is made.

However, appellees' statement is clearly inconsistent with other provisions of the same section which, as pointed

out in the opening brief, place no limit upon the time during which the Department may investigate, or the number of calls for further information that may be made; and in connection with Section 44.05, the range and duration of the investigations authorized may be unreasonable and burdensome as applied to solicitations for either charitable or religious activities. (App. Op. Br. pp. 45, 47, 66, 67, 69, 20, 29.)

Appellees fail to attempt refutation of appellant's claims that the 48-hour limitation on compliance with a request for "additional information" without limit as to the scope of the inquiry is unreasonable, burdensome and arbitrary, and that the same is true of the standardless delegation of authority contained in the language "for the public concerning the facts required to be stated" relating to the Board's concept and discretion in determining what information is sufficient for the public (App. Op. Br. p. 66), and the contention that the provisions of Section 44.06 in connection with those in Sections 44.05 and 44.12 constitute unreasonable and prohibitive prior restraints upon the exercise of the religious freedom and the rights to dispense charity and to acquire and dispose of property as guaranteed by the Fourteenth Amendment.

The language of Section 44.12 [App. p. 10] is too plain to admit of appellees' contention that the only requirement is that the person solicited "be given a reasonable opportunity to read the card" before a donation may be accepted.

The section says nothing about "reasonable opportunity." It says the person solicited must be given "sufficient opportunity to read same," which obviously means,

as Justice Edmonds of the State Supreme Court construed it, "sufficient time to read it."

The jurists said in this behalf that the information card "may therefore be a sizeable volume of data which in practice, if not in purpose, will effectively block public support," etc., and (27 Cal. (2d) p. 281) with respect to the receipt which Section 44.15 [App. p. 11] requires the solicitor to give the donor, appellees say: "The Information Card can be printed in advance upon the receipt form," thus picturing the whole required procedure as simple and quickly performed.

Opposing counsel, like the majority opinion of the State Court, fail to analyze this section in conjunction with Section 44.12.

However, after careful and intelligent analysis, Justice Edmonds said: "Only by means of a traveling office could a solicitor comply with all of these requirements" (Stat. of Jur., p. 104), and Justice Carter said of these sections, together with Sections 44.02, 44.03, 44.04, 44.07, 44.08, 44.10, 44.11, 44.14 and 44.15:

> "Assuming that the provisions above quoted do not involve any religious test, nevertheless they are so demanding as not only to open the door to unreasonable delay and abuse of discretion, but also as possible to bar certain classes of solicitors found among the 'little people,' obviously they do unreasonably obstruct and delay the collection of funds." (Stat. of Jur., p. 85.)

The foregoing approach by Justice Carter recalls that appellees' brief entirely avoids the issue presented by appellant's opening brief by which it is claimed that the

sections of the ordinance are so interrelated and interdependent that their collective effect is to deny to solicitors and charitable and religious organizations all rights guaranteed by the Fourteenth Amendment. (App. Op. Br. pp. 42-47.)

Appellees' brief assumes that unless the validity of the instant ordinance is sustained the citizens of Los Angeles will be in a defenseless predicament, subjected to corrupt and unprincipled rascals while the "lifeblood of charity" will be denied to the sick and the starving. (App. Op. Br. p. 32.)

It is not that bad. In fact, the only safeguard required is the enactment of a sane, fair, non-discriminatory regulatory ordinance which, unlike the monstrosity now maintained, will not view "with suspicion and distrust" everything that is done in the name of religion and charity, as Justice Edmonds put it (Stat. of Jur., p. 100), and a law which will not assume that the citizens of a municipality far-famed for its culture and educational facilities are mere babes in the woods, to be protected from their own inclinations to do good.

To be a valid ordinance, also, requirements for the utmost efficiency are more warranted as to charitable organizations than in respect to business ventures in which ordinary people invest.

It would seem feasible to suggest that the City of Los Angeles at least try out, for a reasonable period, an identification and registration law, leaving to those general state and city enactments which have generally been found sufficient to protect the public from swindlers and frauds the same means of protection in the matter of

charities, religious or secular. This policy is consistent with the American doctrine that citizens have a right to manage and dispose of their property as they see fit, which implies considerable responsibility on their part, and excludes legislation whose only purpose is guardianship of the individual citizen, whose mental incompetency has not been established.

It is believed that even a mere reading and comparison of appellees' brief with appellant's opening brief will show that the former does no more than scratch the surface in accomplishing its announced purpose of refuting appellant's challenges to the validity of the ordinance involved, as a whole, and to each of its pivotal sections.

Respectfully submitted,

ROBERT H. WALLIS,
Attorney for Appellant.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 1216

THE GOSPEL ARMY, A CORPORATION,

Appellant,

vs.

THE CITY OF LOS ANGELES, BOARD OF SOCIAL SERVICE COMMISSIONERS, DEPARTMENT OF SOCIAL SERVICE, AND DAN O. HOYE, CITY CONTROLLER.

APPEAL FROM THE SUPREME COURT OF THE STATE OF CALIFORNIA.

STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM

RAY L. CHESEBRO,
City Attorney;
BOURKE JONES,
Assistant City Attorney;
WILBUR BASSETT,
Deputy City Attorney,
Counsel for Appellees.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 1216

THE GOSPEL ARMY, A CORPORATION,

Appellant,

vs.

THE CITY OF LOS ANGELES, A MUNICIPAL CORPORATION, THE BOARD OF SOCIAL SERVICE COMMISSIONERS, DEPARTMENT OF SOCIAL SERVICE, AND DAN O. HOYE, CITY CONTROLLER,

Appellees.

STATEMENT OF GROUNDS AGAINST THE JURISDICTION AND MOTION TO DISMISS APPEAL OR AFFIRM JUDGEMENT OF THE SUPREME COURT OF CALIFORNIA

Now come the City of Los Angeles, a municipal corporation, The Board of Social Service Commissioners, Department of Social Service and Dan O. Hoye, City Controller, and disclose and present the following matters and grounds against the jurisdiction on appeal to the Supreme Court of the United States, to wit:

I

The judgment and decision of the Supreme Court of California referred to by appellant is not a "final judgment

or decree" within the meaning of Sec. 237 (a) of the Judicial Code of the United States.

The order appealed from is "judgment reversed". (Appendix to jurisdictional statement, page 71.)

A reversal in California without direction to the lower court is not a final judgment for the purpose of appeal. *Mutual Orange Distributors* v. *Agricultural Prorate Commission*, 30 Fed. Supp., 937 (9 C.C.A.).

A state statute making a decision final is not determinative of finality as a test of right of appeal in this case. *Cole* v. *Violette*, 319 U. S. 581, 87 L. Ed. 1599.

Unless the State Supreme Court order leaves nothing but ministerial duties to the court below, the judgment is not final. *Department of Banking* v. *Pink*, 317 U. S. 264, 87 L. Ed. 254; *Market Street Railway* v. *Railroad Commission*, 89 Law Ed. Adv. Op. 788.

Appeal herein lies only from "a final judgment or decree." (Judicial Code, paragraph 237 (a), 28 U. S. C. A. Sec. 344.)

II

No decision upon any Federal question was necessary to the judgment appealed from.

The judgment of the trial court which was reversed provided that respondents "are hereby permanently restrained and enjoined from the further interference and threatened acts which would in any way prevent the free exercise of the religious liberty and freedom of worship of the said plaintiff."

This judgment is so vague and general that it was reversible on its face. It requires no decision upon any Federal question to determine its invalidity. Thus the Supreme Court of California has already said in a similar case "the contract is set forth in the complaint as Exhibit A, and the decree enjoins the appellant from doing any

act whatever which will in any manner interfere with the rights of the plaintiff under Exhibit A. The decree should be definite as to the things to be performed and to the act enjoined. To enjoin the appellant from doing any act which would in any manner interfere with the plaintiffs' rights under a said contract is too uncertain and indefinite to ever be enforced. The appellant is entitled to have the decree define his rights as well as the rights of the respondents, and to have it direct what specific act appellant is to do as well as what he is not to do." *Ellis* v. *Rademacher,* 125 Cal. 556, p. 559, 58 Pac. 178; *Byers* v. *Colonial Irrigation Co.,* 134 Cal. 553, 66 Pac. 732; *Gregory* v. *Blanchard,* 98 Cal. 311, 33 Pac. 199.

This being the law in California as elsewhere in this country, it was not necessary to determine any Federal question upon an appeal from this decree. Unless it appears that decision from a Federal question was necessary an appeal herein will be dismissed. *Honeyman* v. *Hanan,* 300 U. S. 14, 81 L. Ed. 476; *Southwestern Bell Telephone Co.* v. *State of Oklahoma,* 303 U. S. 206, 82 L. Ed. 751.

III

No Substantial Federal Question Is Involved in This Appeal

No substantial Federal question is involved. It is not sufficient to say that an asserted constitutional right has been abridged. There is no pretense of irreparable injury, and without such showing a mere allegation of breach is insufficient. This was clearly stated in the Circuit Court of Appeals for the Fourth Circuit, "we may assume that the enforcement of the ordinance against plaintiffs under the circumstances herein described would constitute a violation of their constitutional rights. *Murdock* v. *Commonwealth of Pa.* (319 U. S. 105), but it does not follow that plaintiffs are entitled to the injunction granted them

below. There was no showing of such irreparable injury as would warrant a court of equity to restrain prosecutions." *Walter W. Spence, Chief of Police*, v. *Andrew E. Cole*, 137 Fed. (2d) 71.

AND NOW upon the said grounds and matters hereinbefore set out, the said respondents pray the Supreme Court of the United States to dismiss the said appeal or to affirm the said judgment of the Supreme Court of the State of California.

Respectfully submitted,

RAY L. CHESEBRO,
City Attorney;
BOURKE JONES,
Assistant City Attorney;
WILBUR BASSETT,
Deputy City Attorney,
Counsel for Appellees.

COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1946.

No. 103

THE GOSPEL ARMY, a corporation,

Appellant,

vs.

THE CITY OF LOS ANGELES, BOARD OF SOCIAL SERVICE COMMISSIONERS, DEPARTMENT OF SOCIAL SERVICE, and DAN O. HOYE, City Controller,

Appellees.

APPELLEES' BRIEF.

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SUBJECT INDEX

PAGE

Introduction 1

Opinion below 2

Statement of the case 2

Statement of questions of law involved 5

Summary of argument 8

Argument 9

Point I. The record discloses no right of appellant to raise the federal question of infringement of religious liberty 9

A.

A corporation may not complain of infringement of religious liberty 9

B.

The appellant may challenge only such portions of the city ordinance as are being applied to it 10

C.

The Dart case is not determinative of the issues in this case.. 12

Point II. The City of Los Angeles has jurisdiction to adopt reasonable regulations upon the solicitation of money or property for charitable purposes 13

A.

The extent of the police power with respect to charitable solicitations 13

B.

The State may exercise reasonable control over the solicitations of funds by religious organizations 17

C.

The charity solicitation ordinance is not void because of unreasonableness 19

Point III. The provisions of the city ordinance regulating secondhand and junk dealers and junk collectors constitute a valid exercise of the police power 37

Point IV. The revenue tax license provisions of the Los Angeles Municipal Code are not invalid 39

Conclusion 42

INDEX TO APPENDIX

	PAGE
Exhibit "A." Soliciting of Alms, Ordinance No. 34,983 (N. S.), approved November 1, 1916	1
Section 1	1
Section 2	1
Section 3	2
Section 3½	3
Section 4	3
Section 5	3
Section 6	4
Section 7	4
Exhibit "B." Sections of License Ordinance of the City of Los Angeles	5
Section 21.08	5
Section 21.10	5
Section 21.100	5
Section 21.134	6
Section 21.201	6
Exhibit "C." Ordinance No. 28,255 (N. S.)	9
Section 1	9
Section 2	9
Section 3	9
Section 4	10
Section 5	10
Section 6	10
Section 7	11
Section 8	11
Exhibit "D." Resolution of Municipal Charities Commission	12
Exhibit "E." Ordinance No. 34,982 (N. S.)	13
Section 1	13
Section 2	14
Section 4	18

TABLE OF AUTHORITIES CITED

CASES	PAGE
Bandini Petroleum Co. v. Superior Court, 284 U. S. 8	11
Barbier v. Connolly, 113 U. S. 27	14
Cantwell v. Connecticut, 310 U. S. 296	16, 17, 26, 35
Chaplinsky v. New Hampshire, 315 U. S. 568	13, 18
Cox v. New Hampshire, 312 U. S. 569	18
Dart, Ex parte, 172 Cal. 47	12, 13, 26, 32
Davis v. Beason, 133 U. S. 333	16
Hague v. C. I. O., 307 U. S. 496	9
Jamison v. Texas, 318 U. S. 413	26
Jones v. Brim, 165 U. S. 180	14
Largent v. Texas, 318 U. S. 418	26
Martin v. Struthers, 319 U. S. 141	17
Miller v. Strahl, 239 U. S. 426	31
Mugler v. Kansas, 123 U. S. 623	14
Murdock v. Pennsylvania, 319 U. S. 105	17, 35, 39
National Labor Relations Board v. Jones & Laughlin, etc., 301 U. S. 1	22
Nash v. United States, 229 U. S. 373	31
Nebbia v. New York, 291 U. S. 502	13
People's Banking Co. v. Sterling, 300 U. S. 175	12
Premier-Pabst Sales Co. v. Grosscup, 298 U. S. 226	12
Prince v. Massachusetts, 321 U. S. 158	18
Purity Extract & Tonic Co. v. Lynch, 226 U. S. 192	26
Reynolds v. United States, 98 U. S. 145	16
Rosenthal v. People of the State of New York, 226 U. S. 260	38
Thomas v. Collins, 323 U. S. 516	17, 35
Trustees Philadelphia Baptist Assn. v. Hart's Executors, 4 Whar. 1	15
Utah Power & Light Co. v. Pfost, 286 U. S. 165	11

PAGE

United States v. Butler, 297 U. S. 1 16

Vanderbilt v. Commissioner of Internal Revenue, 93 F. (2d) 360 3

Vidal et al. v. Girard's Executors, 2 Howard 127 15

Virginian Ry. Co. v. System Federation No. 40, etc., 300 U. S. 515 13

Union Pacific R. R. Co. v. City of Los Angeles, 53 Cal. App. (2d) 825 39

United States v. Shreveport G. & E. Co., 287 U. S. 77 22

West Virginia State Board v. Barnette, 319 U. S. 624 36

Western Turf Assn. v. Greenberg, 204 U. S. 359 9

White v. Central Dispensary etc., 69 App. D. C. 122, 99 F. (2d) 355 ..... 4, 37

White v. Johnson, 282 U. S. 367 11

STATUTES

California Code of Civil Procedure, Sec. 1094.5 41

California Constitution, Art. XI, Secs. 6, 8, 11 13

Code of the District of Columbia, Part 18, Subsec. 3 (31 Stats., Ch. 854, Sec. 527, p. 1282) 3

Code of the District of Columbia, Part 18, Subsec. 3 (31 Stats., Ch. 854, Sec. 599, p. 1283) 2

England Laws (Stats. of 43 Elizabeth) 15

Los Angeles Municipal Code, Licensing Ordinance, Sec. 21.10 39

Los Angeles Municipal Code, Licensing Ordinance, Sec. 21.201 ..... 39, 42

Los Angeles Municipal Code, Licensing Ordinance, Sec. 24.01 ..... 37, 38

Los Angeles Municipal Code, Ordinance No. 31,623, Art. 2, Chap. 4, Sec. 24.01 ..... 6, 7, 11

Los Angeles Municipal Code, Ordinance No. 34,982 ..... 22, 23

Los Angeles Municipal Code, Ordinance No. 34,983 (N. S.) 6

PAGE

Los Angeles Municipal Code, Ordinance No. 69,289 (N. S.)..... 6

Los Angeles Municipal Code, Ordinance No. 69,289, Chap. 4, Art. 4 6

Los Angeles Municipal Code, Ordinance No. 77,000, Sec. 44.01-44.19 .....6, 11, 34

Los Angeles Municipal Code, Ordinance No. 77,000, Sec. 44.02 .....20, 21

Los Angeles Municipal Code, Ordinance No. 77,000, Sec. 44.03 .....20, 21

Los Angeles Municipal Code, Ordinance No. 77,000, Sec. 44.04 .....19, 22

Los Angeles Municipal Code, Ordinance No. 77,000, Sec. 44.05 23

Los Angeles Municipal Code, Ordinance No. 77,000, Sec. 44.06 .....24, 34

Los Angeles Municipal Code, Ordinance No. 77,000, Sec. 44.07 19

Los Angeles Municipal Code, Ordinance No. 77,000, Sec. 44.08 25

Los Angeles Municipal Code, Ordinance No. 77,000, Sec. 44.09 25

Los Angeles Municipal Code, Ordinance No. 77,000, Sec. 44.10 19

Los Angeles Municipal Code, Ordinance No. 77,000, Sec. 44.11 19

Los Angeles Municipal Code, Ordinance No. 77,000, Sec. 44.12 27

Los Angeles Municipal Code, Ordinance No. 77,000, Sec. 44.13 28

Los Angeles Municipal Code, Ordinance No. 77,000, Sec. 44.14 28

Los Angeles Municipal Code, Ordinance No. 77,000, Sec. 44.15 29

Los Angeles Municipal Code, Ordinance No. 77,000, Sec. 44.16 .....24, 27, 29

Los Angeles Municipal Code, Ordinance No. 77,000, Sec. 44.17 33

Los Angeles Municipal Code, Ordinance No. 77,000, Sec. 44.18 33

Los Angeles Municipal Code, Ordinance No. 77,000, Sec. 44.19 33

United States Constitution, Fourteenth Amendment..... 14

IN THE

Supreme Court of the United States

OCTOBER TERM, 1946.

No. 103

THE GOSPEL ARMY, a corporation.

Appellant,

vs.

THE CITY OF LOS ANGELES, BOARD OF SOCIAL SERVICE COMMISSIONERS, DEPARTMENT OF SOCIAL SERVICE, and DAN O. HOYE, City Controller,

Appellees.

APPELLEES' BRIEF.

Introduction.

The case at bar presents the novel situation of a *corporation* contending that the First and Fourteenth Amendments to the Constitution of the United States afford it immunity from regulation of its secular activities because a portion of the income therefrom is devoted to the support of religious activities carried on by the corporation. If, as appellant contends, it may engage in the business of dealing in secondhand articles or in junk free from regulation because a part of its income therefrom is used for the distribution of religious tracts and New Testaments, and the holding of two or three religious

services each week, it follows as a logical conclusion that any corporation organized under the laws of the State of California as a "non profit corporation" may engage in the business of operating dance halls, skating rinks, shows, "fire sales," pool halls, liquor establishments or any other similar activity free from all police regulation customarily imposed upon such activities if a part of the income therefrom is devoted to the "practice of religion."

Appellant urges the invalidity not only of all sections of the ordinance regulating charitable solicitation but also of the section regulating secondhand dealers and junk dealers. Nowhere in the record does it appear that there has ever been a request that appellant comply with regulations governing secondhand dealers or junk dealers, or that it comply with the provisions of the charitable solicitation regulations except in so far as the operation of its industrial department is concerned.

Opinion Below.

The opinion of the Supreme Court of the State of California is reported in ~~28~~ 27 Cal. (2d) 232.

Statement of the Case.

The appellant, The Gospel Army, is a corporation [Complaint, Tr. p. 1, par. I]. Examination of the files of the County Clerk of Los Angeles County, California, discloses that such corporation was originally incorporated in the District of Columbia in August, 1905, as a charitable corporation under the provisions of Subsection 3 of Part 18, Code of the District of Columbia (31 Stats. Ch. 854, Sec. 599, p. 1283). It is to be noted that it is Subsection 2, Part 18 of such code which provides for

incorporation of "religious societies" (churches) (31 Stats. Ch. 854, Sec. 587, p. 1282 *et seq.*).

The powers of the corporation, as stated in the Articles of Incorporation, are as follows:

> "The particular business and objects of The Gospel Army shall be for the support and promotion of benevolent and charitable objects and institutions, to conduct religious services, to visit and minister to the sick and needy, to care for widows and orphans, to rescue the fallen, to open up and maintain shelter and food stations for temporary relief of the homeless and needy, and generally to do those things needful for the promotion of religion, morality and charity. It will for said purposes form and establish branch societies through its officers and agents appointed and delegated for that purpose, in different parts of the District of Columbia, and in different States and Territories of the United States of America, and will adopt by-laws and regulations for the government of said branch associations not inconsistent with the laws and Constitution of the United States nor of any state or territory."

Although given the power to hold religious meetings, the primary purpose of the corporation appears to be the promotion of charity.

The character of a corporation is to be determined from its charter, constitution and by-laws (*Vanderbilt v. Commissioner of Internal Revenue* (C. C. A. 1), 93 F. (2d) 360), but the fact that it is incorporated as a charitable

institution is not conclusive proof that it is such in fact. (*White v. Central Dispensary etc.*, 69 App. D. C. 122, 99 F. (2d) 355).

The Supreme Court of California in its decision epitomizes the record [Tr. pp. 79-80, fols. 127-129]. It is deemed advisable, however, to call particular attention to the following facts:

Although the basis of appellant's argument is that it is engaged in religious practices, the only evidence of truly religious work performed by the corporation or its members is that it furnishes tracts, the number and cost of which is not shown, to be distributed by its solicitors of money [Tr. p. 21, fol. 37], and that during its existence it has distributed 300 New Testaments to members of the armed forces, the cost of which does not appear [Tr. p. 21, fol. 37]. Whether such distribution was over the entire span of the life of the corporation or during World War II, we cannot determine.

In addition to the activities above named, the appellant rents a place as a mission, where a Mr. Perigo holds services twice a week without compensation from the corporation [Tr. p. 18, fol. 33; p. 47, fol. 75; p. 49, fol. 79]. The money solicitors distribute the tracts in the course of their solicitation for funds, for which they receive compensation on the basis of 30 per cent commission [Tr. p. 21, fol. 37; p. 28, fol. 47; p. 50, fol. 79].

Statement of Questions of Law Involved.

Excluding questions bearing only upon the matter of jurisdiction, examination of the record shows that the only question involved is the right of appellant to operate, free from regulation, an industrial department which collects personal property, some of which is placed in the office or warehouse of such department primarily for sale, the remainder being sold to mills. Ten per cent only of the proceeds from the sale to mills is given to the appellant.

It appears proper to correct what is no doubt an inadvertent statement concerning the sections of the Los Angeles Municipal Code made by appellant in its statement of jurisdiction at page one thereof:

> "The state statute involved in this case is Ordinance No. 77,000 of the incorporated City of Los Angeles, California, which ordinance is entitled 'Charities.' It contains nineteen sections, some of which have many subdivisions, the 19th containing 33 subsections, the last 28 of which regulate 'Pawnbrokers, Second Hand Dealers, Junk Dealers, Collectors,' and said ordinance, through the provisions of said sections, purports to regulate all public solicitations of donations for charitable purposes and it prohibits any such solicitations without strict compliance with its provisions, and violations thereof are made punishable as penal offenses."

The plain import of such statement is that the provisions relative to pawnbrokers, etc., are intended to supple-

ment or control the provisions relative to solicitation of charity. However, such is not a fact. The Los Angeles Municipal Code (Ordinance No. 77,000) is divided into chapters, which in turn are divided into articles. What are now the charity solicitation sections of the Los Angeles Municipal Code (Secs. 44.01 to 44.19, incl.) are in fact a codification of Ordinance No. 69,289 (New Series) approved April 4, 1931, together with amendments made since codification. Such ordinance repealed Ordinance No. 34,983 (N. S.) approved November 1, 1916 (not long after the decision in *Ex parte Dart,* 172 Cal. 47). Ordinance No. 34,983 is printed in the appendix hereto as Exhibit "A" [Appendix p. 1]. Ordinance No. 69,289, as amended, was carried into the code as Article 4 (Charities and Relief) of Chapter 4 (Public Welfare) of the Los Angeles Municipal Code at the time of the codification of the ordinances of the city in 1936, by Ordinance No. 77,000.

The section regulating and licensing pawnbrokers, secondhand dealers and collectors was originally Ordinance No. 31,623 (N. S.), approved January 15, 1915, and, as amended, was carried into the Los Angeles Municipal Code, in 1936, as Section 24.01, being one of the sections comprising Article 4 (Auctioneers, Second Hand Dealers, Pawnshops) of Chapter 2 (Licenses, Permits, Business Regulations).

The charity solicitation provisions are administered by the Social Service Commission of the city, while the

provisions of Chapter 4 of Article 2, which include Section 24.01, are administered by the Police Commission of the city.

Thus it appears that the provisions regulating charitable solicitations and those regulating secondhand and junk dealers and junk collectors, originated at different times, were adopted by different ordinances and are administered by different departments of the city government. They have no relation to each other, except that in the codification of existing ordinances in 1936 both were incorporated in the Los Angeles Municipal Code by Ordinance No. 77,000.

Generally speaking, each chapter of the code contains ordinances *administered* by a different department of the city government, although the police force *enforces* all penal provisions of such code as well as penal provisions of the state laws.

SUMMARY OF ARGUMENT.

POINT I.

THE RECORD DISCLOSES NO RIGHT OF APPELLANT TO RAISE THE FEDERAL QUESTION OF INFRINGEMENT OF RELIGIOUS LIBERTY.

A. A CORPORATION MAY NOT COMPLAIN OF INFRINGEMENT OF RELIGIOUS LIBERTY.

B. THE APPELLANT MAY CHALLENGE ONLY SUCH PORTIONS OF THE CITY ORDINANCE AS ARE BEING APPLIED TO IT.

C. THE DART CASE IS NOT DETERMINATIVE OF THE ISSUES IN THIS CASE.

POINT II.

THE CITY OF LOS ANGELES HAS JURISDICTION TO ADOPT REASONABLE REGULATIONS UPON THE SOLICITATION OF MONEY OR PROPERTY FOR CHARITABLE PURPOSES.

A. THE EXTENT OF THE POLICE POWER WITH RESPECT TO CHARITABLE SOLICITATIONS.

B. THE STATE MAY EXERCISE REASONABLE CONTROL OVER THE SOLICITATIONS OF FUNDS BY RELIGIOUS ORGANIZATIONS.

C. THE CHARITY SOLICITATION ORDINANCE IS NOT VOID BECAUSE OF UNREASONABLENESS.

POINT III.

THE PROVISIONS OF THE CITY ORDINANCE REGULATING SECONDHAND AND JUNK DEALERS AND JUNK COLLECTORS CONSTITUTE A VALID EXERCISE OF THE POLICE POWER.

POINT IV.

THE REVENUE TAX LICENSE PROVISIONS OF THE LOS ANGELES MUNICIPAL CODE ARE NOT INVALID.

ARGUMENT.

POINT I.

The Record Discloses No Right of Appellant to Raise the Federal Question of Infringement of Religious Liberty.

A.

A Corporation May Not Complain of Infringement of Religious Liberty.

The appellant is a corporation. There is no evidence that the religious freedom of a single member of the corporation or of its employees has been curtailed. Whether considered employees or members of the organization, its solicitors of funds for religious purposes have not been interfered with, and its lone minister, Mr. Perigo, has been allowed to solicit funds with which to sustain his needs while he ministers to the work of the Lord without remuneration of any kind from the corporation [Tr. p. 50, fol. 79].

> "Natural persons, and they alone, are entitled to the privileges and immunities which Section 1 of the Fourteenth Amendment secures for 'citizens of the United States.' Only the individual respondents may, therefore, maintain this suit."
>
> *Hague v. C.I.O.*, 307 U. S. 496, 514;
>
> See also, *Western Turf Assn. v. Greenberg*, 204 U. S. 359, 363.

An artificial creature of the law can have no religious belief, and no practice indulged in by such an institution can truthfully be said to be the religious practice of the institution.

It follows that the only issue which can be raised here is the business or commercial rights of the corporation, and no question of infringement of religious activity is involved. However, the California Supreme Court discussed the ordinance as though there were a party plaintiff entitled to raise the issue of religious freedom. For that reason we disregard the fact that none of the appellant's members, employees or agents are parties to the action, and discuss fully the validity of the charity provisions of the ordinance as if an attempt or threat had been made to apply the provisions thereof to the appellant or its employees.

B.

The Appellant May Challenge Only Such Portions of the City Ordinance as Are Being Applied to It.

The record does not disclose that solicitors of the appellant who solicit for money have been or will be required to subject themselves to the provisions of the ordinances of the City of Los Angeles named in the complaint. In fact, the testimony of the defendants, which is undenied by plaintiff, plainly discloses that there was no disagreement with respect to such solicitors, and that the sole bone of contention has been in regard to the operation of the industrial department of appellant corporation [Tr. p. 65, fols. 102-103; p. 67, fol. 106].

It follows that the ordinances named, insofar as they pertain solely to solicitation for charitable purposes by solicitors of the appellant, other than those employed or used by the industrial department, are not involved in the present case.

The record fails to show that any person requested the appellant to secure a secondhand dealer's license or a junk dealer's license from the Police Commission, or threatened to enforce such provisions of law against the appellant. Nor is there any record that any organization engaged in charitable or religious work was ever asked to secure such license. It appears from the record that the appellant filed an application to be relieved from payment of a revenue license tax and that such application was referred to the Social Service Commission for its recommendations [Tr. p. 72, fol. 113, to p. 73, fol. 116]. Provisions of the revenue sections of the Los Angeles Municipal Code, pertinent hereto, are printed as Exhibit "B" in appendix hereto [Appendix p. 5]. The provisions covering licensing of secondhand dealers, etc. (Sec. 24.01) and charitable solicitations (Secs. 44.01 to 44.19) are printed in appellant's brief and no need for printing them in full herein appears.

A litigant can be heard to question a statute's validity only when and insofar as it is being applied to his disadvantage.

Utah Power & Light Co. v. Pfost, 286 U. S. 165, 186.

The constitutionality of a statute is not to be drawn into question except in connection with its application to some person.

White v. Johnson, 282 U. S. 367, 373.

Constitutional questions are not dealt with abstractly.

Bandini Petroleum Co. v. Superior Court, 284 U. S. 8, 22.

See also:

People's Banking Co. v. Sterling, 300 U. S. 175, 184;

Premier-Pabst Sales Co. v. Grosscup, 298 U. S. 226, 227.

Thus we discover that the only question involved here is the right of the city to demand that, if the appellant wishes to solicit personal property as a gift and sell the same, or distribute portions of such property as charity and sell the balance in the open market, it must comply with certain provisions of the charities solicitation provisions of the Municipal Code, and also pay an occupation tax for the conduct of the business of selling personal property unless relieved of such tax in the manner provided by law.

C.

The Dart Case Is Not Determinative of the Issues in This Case.

Appellant quotes at length from the opinion written by Mr. Justice Hinshaw in *Ex parte Dart*, 172 Cal. 47, and would have the court consider the portions quoted as being the law of the case. The *Dart* case is not involved in the case before this court. Whether the decision of the State Court upon the present ordinance be considered as a reversal of the former opinion of such court, or as decision upon questions not involved in the *Dart* case, it is apparent that the only question involved here is the correctness of the decision of the State Court upon the ordinance now existing.

For this reason we do not discuss appellant's remarks in his brief or in his statement of jurisdiction concern-

ing the *Dart* case. However, for such comparison as the court may deem advisable, we print the ordinance involved in the *Dart* case in our appendix hereto [Appendix p. 9, Exhibit "C"], and also the order of the Municipal Charities Commission of the city and the resolution out of the attempted enforcement of which gave rise to the *Dart* case [Appendix p. 12, Exhibit "D"].

POINT II.

The City of Los Angeles Has Jurisdiction to Adopt Reasonable Regulations Upon the Solicitation of Money or Property for Charitable Purposes.

A.

The Extent of the Police Power With Respect to Charitable Solicitations.

The matter of regulation of solicitation of donations, funds or property for use in charitable enterprises comes under the police power of the state, and in California the police power of municipalities is co-extensive with that of the state, subject only to two limitations not pertinent to this case. (California Constitution, Art. XI, Sec. 11. See also, California Constitution, Art XI, Secs. 6 and 8.)

Property of citizens and all rights possessed by them are held or exercised subject to a reasonable exercise of the police power.

Nebbia v. New York, 291 U. S. 502, 523;

Chaplinsky v. New Hampshire, 315 U. S. 568, 571;

Virginian Ry. Co. v. System Federation No. 40, etc., 300 U. S. 515, 558.

The Fourteenth Amendment does not prohibit the proper exercise of the police power of the state.

Barbier v. Connolly, 113 U. S. 27;
Mugler v. Kansas, 123 U. S. 623;
Jones v. Brim, 165 U. S. 180, 182.

We do not understand the appellant to urge that the city has no power to regulate the solicitation of charity by a secular organization such as, for instance, an organization for the relief of the blind, or for the amelioration of the conditions of wounded veterans. We understand its contention to be that, if such solicitation is made by a religious organization, one of whose tenets of belief is that it is a part of their duty to minister to the physical needs of the halt, the blind, and the poor, those ministrations are such part of the practice of religion as to prevent any regulation upon the method of solicitation of funds with which to carry on such work. If the solicitation of funds for use in charitable purposes be a matter beyond the reach of the police power, it would appear to follow that the administration of funds so secured is likewise beyond the police power, and that activities supported by such funds are in the same situation.

We think no one would urge that, in spite of ordinances prohibiting such acts a charitable organization, religious or otherwise, supplying free meals to the hungry, may use spoiled food for such purpose, or, if supplying clothing to the needy, may supply them with cast-off garments in which the germs of a communicable disease might lie.

If administration of charity be not subject to the exercise of the police power, the homes maintained for the indigent, the hotels maintained by the Salvation Army and other religious organizations for the benefit of the underprivileged classes of society, as well as the many hospitals and other charitable institutions, would not be subject to such laws.

It appears to be well established under the laws of England, at least from the statutes of 43 Elizabeth, that the state has power of supervision over charities.

Trustees Philadelphia Baptist Assn. v. Hart's Executors, 4 Whar. 1;

Vidal, et al. v. Girard's Executors, 2 Howard 127.

It appears that the matter of regulation of charities comes within the ambit of the constitutional provision that regulations of a given character must apply equally upon all persons similarly situated. If this be true, an ordinance which prescribed rules for the conduct of solicitation of funds by a secular charitable organization such as the Boy Scouts, or the Society for the Prevention of Cruelty to Animals, neither of which makes claim to being a church or religious organization, but exempted from such regulation similar solicitations by the Methodist or Baptist Church for support of the same kind of charity purposes, would constitute unlawful discrimination against the societies subjected to the provisions of the ordinance.

This court in *Cantwell v. Connecticut*, 310 U. S. 296, at pages 303, 304, again affirmed the principles expressed in *Davis v. Beason*, 133 U. S. 333, and *Reynolds v. U. S.*, 98 U. S. 145, that, although the right to believe, preach and teach one's religious belief is absolute, statutes may circumscribe the practice of such belief. We think it now well settled that in this country everyone has a right, protected by our Constitution, to entertain and publicly preach any religious belief. To say that believers in any religion have a right to engage in practices thereof which tend to jeopardize the welfare of a community would be to go much farther than this court has gone heretofore. Although there is nothing in the record to show malversation by appellant, such fact does not argue that other persons have not so acted and may not so act in the future unless suitable supervision and regulation of their acts be provided.

This court may not close its eyes to facts which are of common knowledge.

United States v. Butler, 297 U. S. 1, 61.

It is a matter of common knowledge that persons often solicit funds upon the false representation that such funds are to be used for a certain charity and thereafter appropriate them to their own use. Appellant urges that the people of the State of California have it in their power to prosecute such persons for theft. Criminal prosecution does not recover for victims of fraud the losses they suffer, and the state is not rendered powerless to prevent fraud by reason of the fact that the perpetrator of a fraud may be criminally punished for his actions.

B.

The State May Exercise Reasonable Control Over the Solicitations of Funds by Religious Organizations.

Although there may be no restrictions upon the right to embrace, teach and preach the religion of one's choice, the practice thereof may be circumscribed under the police power.

Cantwell v. Connecticut, supra, 310 U. S. 296.

A reasonable system of registration of persons engaged in solicitation of funds for use of religious organizations does not impinge upon the guaranties of religious freedom in the Federal Constitution.

Cantwell v. Connecticut, supra, 310 U. S. 296;

Murdock v. Pennsylvania, 319 U. S. 105, 116;

Martin v. Struthers (concurring opinion Mr. Justice Murphy), 319 U. S. 141, 151.

So far as our research can determine, this court has not defined or limited the extent or class of permissible registration except to the extent it has done so in *Thomas v. Collins*, 323 U. S. 516, which case did not involve the solicitation of funds (*id.*, page 533). The court at page 540 said:

> "Once the speaker goes further, however, and engages in conduct which amounts to more than the right of free discussion comprehends, as when he undertakes the collection of funds or securing subscriptions, he enters a realm where a reasonable registration or identification requirement may be imposed."

The only limits which the court in that case imposed was that such system of registration or identification be such as does not intrude upon the rights of free speech and free assembly.

Mr. Justice Jackson, concurring (*id.*, p. 545) said:

> "The modern state owes and attempts to perform a duty to protect the public from those who seek for one purpose or another to obtain its money. When one does so through the practice of a calling, the state may have an interest in shielding the public against the untrustworthy, the incompetent, or the irresponsible, or against unauthorized representation of agency. A usual method of performing this function is through a licensing system."

While in the cited case the court was discussing only the rights of free speech and public assembly, no reason appears why the language and reasoning in such case does not apply to charitable and religious organizations and their activities.

That such organizations are subject to reasonable police regulations which do not interfere with the right of the members to teach and preach their religious beliefs, is now well settled.

Cox v. New Hampshire, 312 U. S. 569;

Chaplinsky v. New Hampshire, 315 U. S. 568;

Prince v. Massachusetts, 321 U. S. 158.

The ordinance here involved not only does not interfere with the right to teach and preach one's religion, but it places no restrictions upon solicitation of funds

to be devoted to such purpose. The ordinance, insofar as religious organizations may be concerned, is well within the limits of the police power as defined by this court.

C.

The Charity Solicitation Ordinance Is Not Void Because of Unreasonableness.

Although it is well established that the validity of legislative acts is presumed, we have seen fit, without in any manner abandoning the benefit of such presumption, to submit our case as though the burden were upon us, rather than confining our efforts to refutation of the argument of the appellant. The same is true of our analysis of the ordinance and comments thereon.

It would seem unnecessary to discuss Section 44.04 [Appellant's Brief, Appendix p. 5] which prohibits perpetration of fraud; Section 44.07 [Appellant's Brief, Appendix p. 8] which prohibits use of false or fictitious names; Section 44.10 [Appellant's Brief, Appendix p. 9], prohibiting the use of the name of an association without the consent of at least two officers of the association, or Section 44.11 [Appellant's Brief, Appendix p. 9], which is essentially the same as Section 44.10. Each of such sections is designed to prevent fraudulent solicitation.

In the following discussion of the sections of the ordinance we cite the page in the appendix to appellant's brief where the text of the section is printed, instead of setting it out in full in our brief or reprinting it in an appendix thereto.

(1) *Section 44.02* [Appellant's Brief, Appendix p. 3].

This section, which enumerates powers of the commission, is divided into six subsections.

Subsection (a) provides for publication of the results of an investigation made under the provisions of Section 44.03. We submit that a city which contributes in excess of twenty-five million dollars per year to charity is entitled to full information concerning the various charitable enterprises which seek the largess of its citizens. The same is true as to subsection (b). Any charity which cannot stand the light of honest publicity is not worthy of public support.

With respect to subsection (c) we ask, who would say that allowing the commission to waive certain provisions of the ordinance in the event of a great calamity, such as the San Francisco earthquake and fire, constitutes an illegal delegation of power or is apt to result in discrimination?

Subsection (d) permits the recall of information cards upon the completion of solicitation or expiration of the period for which valid. This is a reasonable provision for the prevention of such cards falling into the hands of those who might make a fraudulent use thereof.

Subsection (e) provides for the recall of cards for additional information. If the public is entitled to information it is entitled to correct information, and certainly it is reasonable to require that the cards be returned promptly rather than that a card which contains incorrect or insufficient information should be used to mislead the public until such time as the holder thereof

thought he could no longer profit by the use thereof. The records of the Social Service Department of the city show that cards are recalled for correction in less than one per cent of the cases.

Subsection (f) was inserted to take care of situations, such as a community chest drive, which are always preceded by much publicity through newspapers, posters, radio announcements, etc., and in which all solicitors used are volunteer workers usually recruited from or through the various agencies or institutions (152 in 1946) which will benefit from the funds subscribed.

(2) *Section 44.03* [Appellant's Brief, Appendix p. 4].

This section sets out the powers of the department. The distinction between the commission and the department is that the commission is the governing board of the Department of Social Service. This section, like Section 44.02, is divided into various subsections; subsection (a) is correlated with subsections (a) and (b) of Section 44.02, and what has been heretofore said with respect to those provisions applies with equal force here.

Subsection (b) authorizes the department to examine books, records and papers of persons on whose behalf solicitations are made. No doubt if this provision were removed from its context and interpreted literally so as to permit the examination of all private papers of a person who files notice of intention to solicit for charitable purposes, it could be said to be too broad. However, the State Supreme Court has not placed such a distorted interpretation upon it. The provision must be con-

sidered and interpreted to carry out the intent of the legislative body of the city.

It is the duty of courts to use a construction, if possible, which will render a provision effective rather than void.

National Labor R. Board v. Jones & Laughlin, etc., 301 U. S. 1, 30;

U. S. v. Shreveport G. & E. Co., 287 U. S. 77, 82.

The provision, properly interpreted, means that the department may examine books, papers and accounts tending to give information concerning a proposed enterprise, which information will enable persons approached for donations to determine whether, in their opinion, the charity is one to which they wish to contribute. Appellant's interpretation (Appellant's Brief, p. 62) that it authorizes the examination of the books and papers of the distressed, appears to be a strained construction of the section, although we can see no constitutional objection to an investigation of the needs of those, and especially of organizations, asking the public to subscribe funds for their upkeep and maintenance.

Subsection (c) authorizes an investigation of the method of solicitation. Such investigation is surely not uncalled for in instances where false statements, etc., are reportedly made in efforts to secure donations. Investigation is often a necessary condition precedent to enforcement of Section 44.04.

Subsection (d) provides for the issuance of information cards, and outlines the contents of such cards. It authorizes the board to endorse a solicitation as provided by Ordinance No. 34,982 [Exhibit "E," Appendix p. 13], or to withhold endorsement. We see no constitutional objection to a department of a city, devoted to considera-

tion of charitable needs, endorsing a worthy cause. The power of the board to endorse is closely limited [Ordinance No. 34,982, Exhibit "E," Appendix p. 13].

To say that a fee of one dollar for the first twenty-five cards (4 cents each for less number) and one dollar per hundred cards thereafter (1 cent each for cards fewer than one hundred) is exorbitant, or an attempt to raise revenue, is to disregard facts with respect to costs of operation of the department.

(3) *Section 44.05* [Appellant's Brief, Appendix p. 5].

This section requires as a condition precedent to engaging in solicitation that the person or organization proposing to solicit file a notice of intention so to do, and it outlines the facts required to be stated therein. Appellant fails to point to any provision which unfairly burdens one who wishes to solicit. Because the appellant specifies no particulars wherein the section fails to meet the standards of constitutionality, it suffices to say that if it be correct that the state owes a duty to those who are to supply the funds, no better means can be found than to furnish the information called for by Subsections (a), (b), (c), (d), (e) and (f) of Section 44.05.

With respect to Subsection (g), it appears plain that information concerning the persons who in effect sponsor a charity is not only of assistance to prospective donors, but of value to the department in determining the extent to which an investigation should be conducted. Subsections (h) and (i) appear to call for no comment.

There is no information required by such Section 44.05 which an honest man could conscientiously refuse to divulge.

With respect to the complaint that the requirements of the section are complicated, suffice it to say that the fact that for thirty years persons and organizations, over one thousand in 1945, have succeeded in furnishing such information and that this case is the first known challenge to such provision, answers this objection to the section.

Appellant insists [Brief, pp. 56-57] that the requirement that a notice of intention be filed ten days before commencement of solicitation would prevent an itinerant preacher from carrying on his work. The baselessness of appellant's claim is readily apparent when we examine Section 44.16 and find that, because of the exception contained therein, an itinerant preacher may come into the city of Los Angeles and immediately proceed to solicit funds for evangelical, missionary or religious purposes.

(4) *Section 44.06* [Appellant's Brief, Appendix p. 7].

The substance of this section is the requirement that agreements with solicitors must be filed. If solicitors are to secure 90 cents out of each dollar he collects, certainly donors should know it.

With respect to the provision that the department may demand additional information within 48 hours, we note that no reasons have been advanced why, if some applicant intentionally or unintentionally suppresses information needed for the public, the department should not be allowed to secure such information. Likewise it is reasonable that the council fix ten days within which information should be furnished, provided it arranged, as it did, for additional time in the event additional time were necessary. One reason for the ten-day provision

is to enable the department to call for additional information during such period, and, upon securing it, issue cards in time to avoid interfering with plans of prospective petitioners.

(5) *Section 44.08* [Appellant's Brief, Appendix p. 8].

With respect to this section we again point out that if the state owes the duty of protection to the public, the requirement that those who are the recipients of its generosity should properly account for the trust which they purport to administer, is not unreasonable or onerous, inasmuch as any system of accounting meets the requirement of the ordinance if it furnishes information which reasonably tends to enlighten donors and prospective donors of the aims and attainments of the organization and the use to which gifts are put.

(6) *Section 44.09* [Appellant's Brief, Appendix p. 8].

Subsection (a) of this section prohibits solicitation of charitable donations by means of boxes and receptacles in public places, without the written permission of the board. It will be seen from examination of the preceding sections that the board is not empowered to deny to anyone filing a notice of intention to solicit the right to conduct solicitation. Neither the commission nor the department has power to prohibit solicitation upon compliance with the conditions precedent prescribed by the ordinance. The Supreme Court of California has interpreted the ordinance as providing that the department must issue cards upon completion of the filing of a notice

containing the information necessary to enable it to prepare cards [Tr. p. 85, fol. 136].

This distinguishes the ordinance in the case at bar from the ordinances heretofore considered by this court which have been of the type involved in the *Dart* case. All of them have to a very considerable extent been ordinances which permitted city officials to arbitrarily deny permits.

Cantwell v. Connecticut, supra, 310 U. S. 296;
Jamison v. Texas, 318 U. S. 413;
Largent v. Texas, 318 U. S. 418.

The only limitation contained in this section is the use of boxes or receptacles in the solicitation of funds. This court can take judicial notice of the fact that the common method of mendicants in securing funds is by means of cups or other receptacles passed among pedestrians. Because of this fact we feel the city could absolutely prohibit solicitation by such method upon the streets in order to prohibit common begging. It is certainly within the police power of the municipality to prohibit begging on the street.

A state, in order to effectuate a policy within its power, may prohibit acts which are in themselves innocuous.

Purity Extract & Tonic Co. v. Lynch, 226 U. S. 192.

The fact that the commission is given power to waive this provision does not render the section invalid in the absence of a showing of discrimination.

Subsection (b) was added to the ordinance to prevent the practice of placing cans, milk bottles, etc., in stores and other places for the purpose of securing donations, the use of which for charitable purposes could not be traced. The provision was added to prevent fraudulent solicitation for alleged charitable purposes. This section, like all others under discussion, does not prevent solicitation by the methods therein named for religious, evangelical or missionary purposes [Sec. 44.16], nor do the provisions of subsection (b) apply to persons who have qualified to solicit for charitable purposes by filing notice of intention.

(7) *Section 44.12* [Appellant's Brief, Appendix p. 10].

We think no one will seriously argue that a person from whom a donation is sought has no right to have information concerning the prospective donee and the use to which his gift will be put. The sole question presented is whether this section constitutes a proper method of imparting such information. There is no requirement that the prospective donor read the card. If upon presentation thereof, he concludes to donate without so reading, the solicitor may accept the donation. The section does not require that the solicitor refuse a donation unless the donor read the card. The only requirement is that the prospective donor be given a reasonable opportunity to read the card.

(8) *Section 44.13* [Appellant's Brief, Appendix p. 10].

This section, like the preceding one, is for the purpose of effectuating the reasonable requirement that donors be afforded information concerning the prospective donee and the use to which contributions are to be put. The object, of course, is to prevent highly exaggerated and fanciful statements which tend to mislead public-spirited persons who might be influenced thereby. The net effect of the section is that, irrespective of how fanciful may be the publication, the information contained upon the information card must be therein.

The provision in this section with respect to solicitation by telephone is probably of no practical effect by reason of the provision of Section 44.18, added in 1939, which we discuss hereafter.

(9) *Section 44.14* [Appellant's Brief, Appendix p. 10].

This section requires that a report of a solicitation campaign be filed. Like so many of appellant's objections to provisions of the ordinance, the objection to this section is very general, and is substantially a conclusion of the appellant. In the absence of more particularization of objections by appellant, we submit that the fact that for many years such reports have been made without any known contest of the right of the commission to demand such report (except the present case) supports the assumption that the required report does not present an onerous burden to persons engaged in soliciting funds and distributing them in charitable activities. Certainly, he who donates is entitled to be informed as to the use made of his gift.

(10) *Section 44.15* [Appellant's Brief, Appendix p. 11].

This section requires that solicitors *tender* to each donor a written receipt; such receipt, in addition to a statement of the amount or kind of donation, must contain certain other information. The information required can be printed in advance upon the receipt form. If the solicitor is soliciting for donation for general use and also for a specific use (see paragraph (b) of section), a blank for insertion of such information can be left on the form. No receipt is required for donations of sums of less than one dollar.

(11) *Section 44.16* [Appellant's Brief, Appendix p. 12].

This section sets out various solicitations which are not subject to the provisions of the ordinance. No provision of this section appears to be questioned other than the provision which excepts solicitations "made solely for evangelical, missionary or religious purposes." There is no claim on the part of appellees that the language quoted is to be construed as requiring that each dollar contributed to persons soliciting for religious purposes be used in teaching or preaching the gospel. This section, as all others in the ordinance, must be reasonably interpreted. Sums for the support of ministers, provision for places to hold services and other expenses reasonably tending to promote promulgation of religious beliefs, must be deemed to be within the scope of the exception. Neither do we insist that the fact that, as an incident to the promotion of a religious work, some physical aid

is given to the needy of the church or to individuals in the community, changes the nature of the solicitation. Where the facts are such that a reasonable person could conclude that the funds solicited are for the primary purpose of promotion of charitable enterprises, or the solicitation is in fact conducted as a blind behind which to carry on other activities, the proper court may so determine. Certainly any religious organization which carries on an endeavor, as a hospital, rest home, etc., separate and apart from its religious activities, should be subject to reasonable regulation. Any organization which hides behind a purported charitable purpose for personal gain is not entitled to protection by the courts.

No employee, officer or board of the city is empowered to determine whether the acts of any person are or are not within the exception. Any one who believes his activity to come within the exception may continue his activity subject only to the possibility that a jury may conclude that he is in error. Neither the commission nor the department prosecutes persons for soliciting in violation of the ordinance. They can only request that prosecutions be instituted in the proper court. They may advise individuals that in their opinion certain acts are unlawful, just as a health officer may tell a cafe owner that his acts are unlawful, or other administrative officer may advise a person that in the opinion of such officer the person is acting unlawfully. Prosecution may not be had unless from facts laid before the city attorney, the official charged with prosecution of violations of penal offenses created by ordinance, he determines that a violation has occurred, or such information be laid before a magistrate and he orders a criminal complaint filed.

If it be argued that, as so construed, the ordinance is not sufficiently definite, such argument is answered in the words of Mr. Justice Holmes:

> "But, apart from the common law as to the restraint of trade thus taken up by the statute, the law is full of instances where a man's fate depends on his estimating rightly, that is, as the jury subsequently estimates it, some matter of degree. If his judgment is wrong, not only may he incur a fine or a short imprisonment, as here; he may incur the penalty of death."
>
> *Nash v. U. S.*, 229 U. S. 373, 377.

See also:

Miller v. Strahl, 239 U. S. 426, 434.

No legislative body could draw a blueprint which would define with exactness what constitutes "solely religious" endeavors. Likewise no legislative body could catalogue all the activities coming within the broad field of social service as distinguished from religion and its promulgation. This court has plainly stated that some form of regulation of solicitation by religious organizations is permissible. It is too well known to be seriously disputed that the public is not infrequently the victim of psuedo religious activities carried on for the purpose of enhancing the financial condition of the promoter of such activities.

Irrespective of the utterances of this court which would justify a procedure requiring solicitors for religious organizations to register and which procedure, if it is to be of benefit to the public, would require giving the name of the organization to which solicitors belong, to-

gether with some statement of the contemplated religious activity and information concerning the amount of money solicited and the use made thereof, the city has seen fit to follow the plan which for more than 30 years has enabled churches and religious organizations to thrive, and which at the same time has enabled it to so supervise charitable activities as to promote public faith in the organizations soliciting under its system of regulation. In 1945 over twenty-five million dollars were given to charity, and during the first nine months of 1946, over thirty million dollars were so given, to say nothing of vast sums not reported to the commission which have been given to build church edifices and support their activities. It is only fair to state that donations for charitable purposes have materially increased since the war.

It is inconceivable that the citizens of Los Angeles should be faced with a situation whereby any person, however corrupt and unprincipled, might come into the city and, without supervision and without furnishing any report of his stewardship, ply his nefarious activities unhindered. Such condition would not only result in the channeling of money needed for the support of the needy, the curing of the sick and the healing of the lame, to ulterior uses, but would result in such reaction upon the public through loss of confidence in purported charitable enterprises that some of our most worthy institutions would starve by reason of the fact that gifts, the life-blood of charity, would be denied them.

The foregoing analysis embraces what might be called the original ordinance, enacted for the purpose of effectuating valid regulations in conformity with the holding of the Supreme Court of California in the *Dart* case. That

some changes and additions have been made during the years to meet conditions which experience found to be detrimental, can be seen by comparing the first sixteen sections of the present ordinance with the ordinance enacted in 1916, printed in the appendix hereto as Exhibit "A" [Appendix p. 1]. In the following we discuss the subsequent sections of the chapter governing charitable solicitations.

(12) *Section 44.17* [Appellant's Brief, Appendix p. 13].

This section was added to take care of the traffic difficulties arising by reason of the use of vehicles for solicitation in that portion of the city having serious traffic congestion.

(13) *Section 44.18* [Appellant' Brief, Appendix p. 13].

This section was added in an attempt to stop what is colloquially known as "boiler room solicitation," in which some person would install telephones in a room and use a battery of high-pressure solicitors to solicit by telephone for alleged and often fictitious charitable enterprises, frequently sending messenger boys in the employ of reputable messenger service companies to pick up the donations, which were thereafter converted to the use of the individual conducting the solicitation.

(14) *Section 44.19* [Appellant's Brief, Appendix p. 13].

This section was added in 1939 by reason of the fact that during the course of years persons from time to time have come to the city and entered into contracts

to secure funds for worthy charities either by solicitation or by promotion of some kind, such as an entertainment to which tickets were sold the public at high prices on the representation that the proceeds were to go to charity. It often developed that the charity received only an insignificant share of the net proceeds, and in some instances the expenses were so padded that the charity received nothing but the criticism of that portion of the public which ascertained the facts.

It is conceded that a literal interpretation of the definition of "promoter" [Sec. 44.01, Appellant's Brief, Appendix p. 1] would result in the section applying to any one who receives any part of funds solicited. As so construed it would render the provisions of Section 44.06 [Appellant's Brief, Appendix p. 7] meaningless. A construction which would render a portion of a statute invalid is to be avoided if any other reasonable construction is possible. It is apparent that the section intends to cover the acts of members or employees of charitable organizations or other persons who engage in promotional activities as independent contractors, and in such capacity agree to secure funds for charitable purposes. Such persons are engaged in a business. The business of raising money for such purposes is subject to a reasonable exercise of the police power.

The provision of the section [Subsection (q), Appellant's Brief, Appendix p. 18] that solicitors employed by promoters shall make bond in the sum of $500.00 and that the board collect a fee of one dollar, plainly shows that the section was not intended to cover solicitations by persons working under the direct supervision and control of charitable organizations conducting their own fund-

raising campaigns. The requirement that one who, as an independent contractor, agrees to collect and account for the funds of another must give a bond for the protection of his employer, and that agents of such contractor likewise furnish security, certainly violates no provision of the Constitution. If, as Mr. Justice Jackson said in his concurring opinion in *Thomas v. Collins, supra,* the state owes a duty to those who supply funds to promote an enterprise, we know of no better plan of protection against embezzlement by promoters and their agents than that of requiring a bond.

In concluding our analysis of the charity solicitation ordinance, we point out that the person who solicits and receives money for charitable purposes is not engaged in the acquisition of property for his own benefit. The money he receives is given him in trust, to be used for the benefit of the public. We know of no higher voluntary trust, and it is only proper that the municipality establish regulations to insure as far as possible that the public will not be defrauded by unworthy and fraudulent solicitors and that the trust fund thus established will not be dissipated.

Argument that regulation of solicitation of such funds constitutes a deprivation of the right to acquire and own property is to urge a strained construction of the provisions of the Constitution. The decisions of your honorable court clearly hold that a municipality may require compliance with a reasonable registration ordinance (*Cantwell v. Connecticut,* 310 U. S. 296) in order that the municipality may investigate "strangers" coming into the community (*Murdock v. Pennsylvania,* 319 U. S. 105).

The right to investigate connotes a right to protect the public against fraud and misrepresentation and even to prohibit solicitation by known embezzlers, as a "* * * restriction only to prevent grave and immediate danger to interests which the state may lawfully protect." (*West Virginia State Board v. Barnette*, 319 U. S. 624, 639.)

Protection against fraud and maladministration of trust funds is within the power of the state. Certainly the decisions of this and other courts bring fraudulent solicitation and embezzlement within the "Clear and Present Danger" doctrine, however circumscribed the outer limits of such doctrine may be.

The record shows that the only members of the appellant corporation are the "workers" [Tr. p. 48, fol. 76], and we are not informed as to what such term implies. From all that appears in the record we may assume that the directors, successors to the original incorporators, constitute the entire membership.

Although there is nothing to show that the directors of appellant corporation have done so, it is readily apparent that any corporation of this character could limit its membership to the number of directors required by law, and could vote to such directors salaries sufficient to use all the income of the corporation, leaving none for charitable purposes. In other words, such a corporation could well be used as the means of accumulating property by the directors, thereby defeating the purpose for which the charter was granted. Such possibility weighs heavily when considering the right of the state to regulate organizations purported to be engaged in either charitable or religious activities.

POINT III.

The Provisions of the City Ordinance Regulating Secondhand and Junk Dealers and Junk Collectors Constitute a Valid Exercise of the Police Power.

Section 24.01 of the Los Angeles Municipal Code, which section regulates the licensing of pawnbrokers, secondhand dealers, junk dealers and collectors, is printed in the appendix of appellant's brief, page 19 thereof, for which reason it is not set out in full herein.

The appellees make no claim that the evidence in the record would sustain a conclusion that the appellant is "engaged in the business" of secondhand or junk dealer or junk collector, regulated by Section 24.01 of the Los Angeles Municipal Code, although the fact that in the sale of articles to the mills only ten per cent of the proceeds go to the appellant, might support a strong inference to that effect. We insist however, that when and if a corporation, whether incorporated as a charitable or religious organization, deals in secondhand goods or junk for the purpose of profit to the members thereof instead of the creation of a trust fund for expenditure in charitable or religious purposes, such corporation is subject to the provisions of the section. The fact that an organization is incorporated as a charitable or religious corporation is not proof, or at least not conclusive proof, that it is not a business corporation. (*White v. Central Dispensary, etc.*, 69 App. D. C. 122, 99 F. (2d) 355).

The only case involving the validity of laws applicable to secondhand and junk dealers decided by this court, so far as we find, is *Rosenthal v. People of the State of*

New York, 226 U. S. 260. That case did not directly involve licensing provisions. It appears from the opinion of Mr. Justice Pitney therein that New York had at that time a licensing plan similar to the city ordinance involved in this case [Sec. 24.01, Appellant's Brief, Appendix p. 19]. Concerning such regulations Mr. Justice Pitney said:

> "Counsel, indeed, concedes the abundant right of the legislature to regulate the junk business, and admits that such regulations as those just referred to are quite within the legislative power of the state. This concession is, we think, very properly made."

Appellant's objection to the decision of the State Supreme Court appears to be based upon the proposition that it is preposterous to suggest that thieves would undertake to dispose of their loot in places which sell only goods donated to it and give the proceeds to charity. Such an outlet for the sale of donated goods is not a firm engaged "in the business" of dealing in secondhand goods.

If devoting a portion of one's income to charitable or religious purposes constitutes grounds for disregarding the provisions of an ordinance valid as to persons who do not contribute to such activities, it is readily apparent that a corporation, owned or controlled by persons desiring to operate for private gain behind a screen of alleged charitable or religious purposes might, by giving or devoting one, five or ten per cent of its income to such purposes, avoid compliance with reasonable police regulations applicable to the business in which the corporation is engaged, and thereby secure to themselves

substantial business advantages not enjoyed by their competitors.

With respect to appellant's statement that the validity of the licensing provisions applicable to persons engaged in the secondhand business was involved in the *Dart* case, suffice it to say that such statement is not in any manner supported by the record in that case.

POINT IV.

The Revenue Tax License Provisions of the Los Angeles Municipal Code Are Not Invalid.

We print as Exhibit "B" in the appendix hereto, pertinent portions of the revenue tax ordinance of the City of Los Angeles [Appendix p. 5]. Section 21-10 [Appendix p. 5] is self-explanatory, in that it shows the licensing provisions apply only to those engaged in an activity as a business, and the California courts have so held (*Union Pacific R.R. Co. v. City of Los Angeles*, 53 Cal. App. (2d) 825, 830).

Section 21.201 [Appendix p. 6] provides that charitable organizations, etc., which deal in secondhand articles, are exempt from the tax if the business is not operated for private gain. It is plainly apparent that the intent of the legislature was to provide a method for exemption of charitable and religious organizations and at the same time prohibit persons engaging in such business for private gain from taking advantage of the exemption. We submit that this section does not come within *Murdock v. Pennsylvania*, 319 U. S. 105.

Section 21.201 cannot under any circumstances be considered as a tax upon the right to teach or advocate a

religious doctrine. Any possible effect it might have upon the teaching or preaching of a religious doctrine is quite remote.

With respect to appellant, it appears from the record that it operates four trucks, puts part of the collections in a store for sale at retail and sells the remainder at mills. Of the material sold to the mills only ten per cent of the proceeds is delivered to the corporation. Concerning what revenue, if any, the corporation receives by reason of the operation of the store we are not advised. Neither are we advised as to the reasonable value of the articles given in charity. We are advised that the corporation, through its solicitors, distributes some tracts, number and cost unknown, and three hundred New Testaments, cost unknown. We are further advised that the corporation gets seventy cents out of each dollar collected by money solicitors (except Mr. Perigo), but we are not advised as to the total money so received.

In short, there is no showing that, after expenses are paid, the remainder is not distributed to members of the corporation as salaries or otherwise. We submit, therefore, that the evidence is sufficient to support the inference that the organization is operated for private gain.

The right of a city to levy an occupation tax upon those who engage in business for private gain in the city is too well established to be open to argument. Whether a given secondhand or junk business is or is not operated for private gain is a question of fact which the city must decide in the first instance, but the final decision must be made by the courts in the event a person engaged in such activities feels that the authorities of the city have discriminated against him.

With respect to the fifty per cent rule used by the commission in determining whether exemption should be granted [Tr. p. 73, fol. 115], we submit that, although establishment of such figure might at first glance appear arbitrary, mature consideration of such provision fails to support that conclusion.

The public records of the Social Service Department of the city disclose that the average expense of solicitation in this city for charitable purposes in 1945 was nine and one-half per cent. Naturally the cost of operation of an industrial department would run somewhat higher. We are unable to segregate costs of such operation so as to give an exact figure. However, it appears that the cost of solicitation of all charitable funds by the Goodwill Industries, which operate the largest industrial department in the city, was twelve and one-half per cent of the total amount of their receipts.

It is our opinion that the selection of fifty per cent is so liberal as to avoid the charge of being arbitrary when applied to the revenue ordinance involved in the instant case in connection with the operation of an "industrial" plant, such as appellant conducted. Whether such rule would constitute a proper yardstick for measuring all applications for exemption we need not decide. If the administrative board errs in its decision the applicant may have such decision reviewed in the Superior Court (California Code of Civil Procedure, Sec. 1094.5), or he may proceed to operate without securing a revenue license, and in any criminal action arising out of his failure to secure such license, or in a civil action for the recovery of such tax, he may show in his defense that

he comes within the exception created by Section 21.201 [Appendix p. 6].

No person engaged in a "business," as such term is defined in the ordinance, has a constitutional right to be relieved from the payment of his fair share of the expenses of government merely because he concludes to devote some portion of the income from such business to charitable pursuits. It follows that unless the effect of the rule is to unfairly and arbitrarily discriminate against some, at the expense of or disadvantage to others, the application of the rule applying to the forgiving of certain debts or obligations due the city does not constitute a violation of our constitutional provisions.

We have herein cited cases holding that one may not complain of a law unless it is applied to his injury. No need to repeat such citations at this point appears. There is no evidence which would support an inference that the application of the rule has or will injure the appellant.

Conclusion.

It is too well settled to admit of argument that, in determining the validity of a legislative act of a state, this court will consider such statute as it has been interpreted by the highest court of the state. The Supreme Court of California has interpreted the ordinance involved as one which applies only to the solicitation of charitable contributions, and has found that the record shows the appellant to have been engaged in solicitation of property for use in charitable activities. We submit that as so interpreted the ordinance comes well within the limits of permissible regulation under the police power.

as such limits have been outlined in the various decisions of this court.

We also submit that the appellant may not raise the question of infringement of religious liberty. Irrespective of arguments covering the broad field of freedom of religion, it is manifest that the question to be decided is quite narrow. It is limited to determining the rights of a corporation to operate and maintain a so-called industrial department for the purpose of securing property for sale if and when the proceeds therefrom are devoted to charitable purposes.

The judgment of the Supreme Court of the State of California should be affirmed.

Respectfully submitted.

RAY L. CHESEBRO,
BOURKE JONES and
JOHN L. BLAND,

Attorneys for Appellees, The City of Los Angeles, Board of Social Service Commissioners, Department of Social Service, and Dan O. Hoye, City Controller.

WILBUR BASSETT,
Of Counsel.

APPENDIX.

Exhibit "A."

SOLICITING OF ALMS.

Ordinance No. 34, 983 (New Series)
Approved November 1, 1916.

An Ordinance regulating the soliciting of alms and contributions for charitable purposes in the City of Los Angeles.

Section 1. It shall be unlawful for any person to make or perpetrate any intentional misstatement, deception or fraud in connection with the solicitation of alms, food, clothing, money or contributions within the City of Los Angeles for charitable or philanthropic purposes.

Sec. 2. It shall be unlawful for any person to solicit alms, food, clothing, money or contributions within the City of Los Angeles, in the name of, or on behalf of, any charitable corporation or association unless such person is authorized in writing by such corporation or association to make such solicitation, and unless a copy of such authorization has been previously filed with the Social Service Commission, and unless such person shall tender to each person donating alms, food, clothing, money or contributions a written or printed receipt signed by the solicitor which will contain in addition to a description of the amount and kind of the donation substantially the following matters:

(a) The name of the corporation or association upon whose behalf the solicitation is made.

(b) A statement as to whether the donation solicited is to be applied for the general purposes of the corporation

or association or for specific purposes, and if for specific purposes the nature thereof shall be clearly stated.

(c) A statement as to the amount, if any, or the proportionate part, if any, of the money donated that is to be used for charitable purposes outside of the City of Los Angeles. In the event that it is impracticable to state said amount of percentage, said receipt shall so declare.

(d) In the event that more than fifteen per cent. of the amount donated is payable in commission and expenses to the solicitor, said statement shall so declare.

Provided, however, that no receipt need be given or tendered if donation of money is made by placing of the same in a locked receptacle, in such manner that it is impracticable to ascertain either the amount donated or the name of the donor, and if a card or placard shall be conspicuously attached to such receptacle containing in legible writing or printing the statements required under subsections (a) to (d), both inclusive, of this section.

Provided, further, that no receipt need be given for any donation of money in an amount less than $1.00.

Sec. 3. It shall be unlawful for any person to solicit alms, food, clothing, money or contributions within the City of Los Angles for charitable, or purported charitable, purposes, unless within the fiscal year of the City of Los Angeles in which such solicitation is made there shall have been filed with the Social Service Commission by the corporation or association upon whose behalf the solicitation is made written notice of intention to solicit

money or property within the City of Los Angeles containing the statements required to be made in the written receipt in Section 2 hereof provided for. Said notice of intention shall be signed by two officers of the corporation or association upon whose behalf the solicitation is to be made and shall be open to the inspection of the public.

Sec. 3½. It shall be unlawful for any person, charitable or philanthropical institution to solicit funds for any purpose whatever by means of boxes or receptacles upon any streets or alleys within the City of Los Angeles, except by written permission of the Social Service Commission.

Sec. 4. On and after one year from the adoption of this ordinance it shall be unlawful for any person to solicit alms, food, clothing, money or contributions within the City of Los Angeles for charitable purposes or purporting to be for charitable purposes on behalf of any corporation or association unless such corporation or association is maintaining a system of accounting whereby all funds donated to it and all disbursements made by it are entered upon the books of its treasurer or other financial officer.

Sec. 5. The provisions of Sections 2 to 4, both inclusive, shall not be applicable to solicitation made upon premises owned or occupied by the corporation or association upon whose behalf such solicitation is made, nor to solicitation for the relief of specific individuals specified by name at the time of the solicitation where the solicitor represents in each case that the entire amount collected, without any deduction whatever, shall be turned over to

the named beneficiary or beneficiaries, nor shall they be applicable to any corporation or unincorporated association soliciting contributions solely from persons who are members thereof at the time of such solicitation, nor shall they be applicable to solicitations made solely for evangelical, missionary or religious purposes.

Sec. 6. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The Council hereby declares that it would have passed this ordinance, and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional.

Sec. 7. That any person violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of not more than one hundred dollars, or by imprisonment in the city jail for a period of not more than thirty days, or by both such fine and imprisonment.

Exhibit "B."

Sections of License Ordinance of the City of Los Angeles

Sec. 21.08. Definitions.

The following words and phrases whenever used in this Article shall be construed as defined in this section, unless from the context a different meaning is intended or unless a different meaning is specifically defined and more particularly directed to the use of such words or phrases.

(g) "Engaged in business" shall mean the conducting, managing or carrying on of any profession, trade, calling, occupation or commercial enterprise in the City licensed under the provisions of this Article as owner, officer, agent, manager, employee, servant or lessee of any of them.

Sec. 21.10. Permit Requirements.

No person shall engage in any business, profession, trade or occupation or perform any act, required to be licensed under the provisions of this Article until such license is first obtained; no license shall be issued hereunder when the provisions of some other Article of this Code or of any other ordinance of this city require a permit to be obtained or to be applied for as a prerequisite to entering into or performing any such business, trade occupation or act, until such permit is first so applied for or obtained as the case may be. Any license issued in violation of this section shall be void.

Sec. 21.100. (a) For every person engaged in the business of buying or selling, or otherwise dealing in used or secondhand rags or paper, or used or secondhand rags

and paper, at a fixed place of business in the City of Los Angeles, the sum of $100.00 per year, or fractional part thereof;

(b) For every person engaged in the business of buying or selling, or otherwise dealing in articles commonly known or referred to as junk, excepting only rags or paper, and including but not limited to old or second-hand sacks, cans, bottles or metals at a fixed place of business in the City of Los Angeles, the sum of $200 per year, or fractional part thereof; provided that a person licensed under the provisions of this subsection may deal in the commodities or materials mentioned in the preceding subsection without obtaining an additional license under the provisions of said preceding section.

Sec. 21.134. For every person engaged in the business of buying, selling or otherwise dealing in secondhand goods, wares or merchandise, the sum of $40.00 per year.

(Note.) This section contains a lengthy provision providing a conditional exception for machinery dealers whose business in secondhand machinery does not exceed 12½% of the total business. Such exception is not pertinent to the questions before this court and is not printed herein.

Sec. 21.201. (a) The provisions of this Article shall not be construed to require the payment of any license fee to operate or carry on the functions of any charitable or religious institution, organization or association organized for charitable or religious purposes and conducted solely for such purposes, nor the payment of any license

fee to engage in teaching, preaching or otherwise disseminating any religious tenets or beliefs of any religion, nor shall a license fee be required for the conducting or staging of any concert, exhibition, lecture or entertainment where the net receipts, if any, derived therefrom are to be used solely for charitable or benevolent purposes within the City of Los Angeles, and not for the purpose of private gain, nor shall any license fee be required to be paid by any religious, charitable, fraternal, educational, military, state, county or municipal organization or association for the conducting or staging of any entertainment, dance, concert, exhibition or lecture when the net receipts derived from any of the same are to be used wholly for the benefit of such organization and not for the purpose of private gain of any individual, or by any Credit Union Corporation organized under the provisions of Act 1887, Statutes of 1927, page 51, as amended, and actually operating for the purposes of and in the manner prescribed by said Act 1887.

(b) An independent contractor who for profit or gain undertakes to carry on any business or activity for the conduct or operation of which a license is required by any section of this Article, shall not be exempted from the payment of the fee established therefor because of the fact that he has paid or agreed to pay or turn over to any charitable institution or organization a portion of the receipts or profits of the business or activity, as a reward or recompense for the sponsorship of the business or activity, or for any other reason, and such a contractor

shall not be deemed to be acting for charitable purposes only.

(c) Any applicant for a license who claims exemption from the payment of the license fee, pursuant to the foregoing provisions of this section, shall make an application for such exemption upon a form furnished by the City Clerk. The application shall be forwarded to the Board of Social Service Commissioners which Board shall make or cause to be made such investigation of the applicant and the business or activity carried on or proposed to be carried on as may be necessary to determine whether or not such business or activity is in fact conducted for charitable purposes only and whether the proceeds thereof are to be used for the purposes mentioned in Subsection (a) hereof. The Board of Social Service Commissioners shall endorse its finding upon the application and return the same to the Clerk. If the finding aforesaid is to the effect that the business or activity is in fact carried on or proposed to be carried on for charitable purposes only, and that the proceeds thereof are to be used for the purposes mentioned in subsection (a) hereof, then the Clerk shall issue the license to the applicant without the payment of the license fee therefor, provided the applicant has complied with all other applicable provisions of this Code, and the license so issued shall show on its face that it was issued without fee and the reason therefor. If the finding be otherwise, the Clerk shall not issue the license unless the regular fee therefor be first paid, as in any other case.

Exhibit "C."

ORDINANCE No. 28,255
(New Series)

An Ordinance prohibiting begging in the public streets, or places, and regulating the soliciting of alms and contributions for charitable purposes in the City of Los Angeles.

The Mayor and Council of the City of Los Angeles do ordain as follows:

Section 1. It shall be unlawful for any person to beg, or practice begging; in or on any public street, or in any public place in the City of Los Angeles.

Sec. 2. It shall be unlawful for any person, firm, corporation or association to solicit alms, food, clothing, money or contributions within the City of Los Angeles, without first securing a permit so to do from the Municipal Charities Commission of said city. Provided, however, that the provisions of this section shall not apply to properly accredited solicitors of established churches of said city soliciting for purely religious purposes, but it shall apply to the various institutional works carried on by said churches in like manner as other persons, firms, corporations and associations. The permit from the Charities Commission above referred to shall consist of a written certificate issued by the said commission certifying that the object of said solicitation is worthy and meritorious, and authorizing the soliciting of gifts and donations therefor; said permits may be revoked by said Commission at any time.

Sec. 3. It shall be unlawful for any person to solicit or collect for any charitable or philanthropic organization,

without first obtaining a written permit so to do from the Municipal Charities Commission; said permit shall be revocable at any time in the discretion of said Commission, which may adopt such regulations regarding the soliciting and collecting of funds as its judgment may dictate, and it shall be obligatory upon the holders of such permits to abide by such rules and regulations.

Sec. 4. It shall be unlawful for any person, firm, corporation or association to give or promote any entertainment, fair, bazaar or benefit in the name of charity or philanthropy, without first obtaining a written permit so to do, from the Municipal Charities Commission, said permit to be revocable at any time at the discretion of said Commission.

Sec. 5. It shall be unlawful for any person, firm, corporation or association to solicit funds, within the City of Los Angeles, for any ethical, evangelistic, religious, missionary or charitable purposes without having first obtained an endorsement certificate from the Municipal Charities Commission. Provided, however, that the provisions of this section shall not apply to established and recognized churches or other religious organizations in the City of Los Angeles.

Sec. 6. It shall be unlawful for any person, firm, corporation or association to sell, or offer for sale, any clothing, household goods, or other goods, wares or merchandise which have been solicited or donated for charity or philanthropy without first obtaining a written permit so to do from the Municipal Charities Commission, said per-

mit to be revocable at any time at the discretion of said Commission.

Sec. 7. That any person, firm, corporation or association violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of not more than one hundred ($100) dollars, or by imprisonment in the city jail for a period of not more than thirty (30) days, or by both such fine and imprisonment.

Sec. 8. That in order to properly regulate the soliciting of aid for charitable or philanthropic purposes and to prevent fraud and deception from being practiced by soliciting for such purposes, this ordinance is urgently required for the immediate preservation of the public peace, health and safety; and the City Clerk shall certify to its passage by a unanimous vote, and cause the same to be published once in The Los Angeles Daily Journal, and thereupon and thereafter it shall take effect and be in force.

I hereby certify that the foregoing ordinance was introduced at the meeting of the Council of the City of Los Angeles of August 15, 1913, and was passed at its meeting of September 13, 1913.

CHARLES L. WILDE,
City Clerk.

Approved this thirteenth day of September, 1913.

F. J. WHIFFEN,
Acting Mayor.

Exhibit "D."

RESOLUTION OF MUNICIPAL CHARITIES COMMISSION.

Whereas, by Section 3 of that certain Ordinance of the City of Los Angeles, No. 27,510 (New Series), entitled, An Ordinance Creating a Municipal Charities Commission, and prescribing its powers and duties;

The Municipal Charities Commission has power to endorse such charities dependent upon public appeal or general solicitation for support as meet actual needs of the community, attain a reasonable standard of efficiency and are so conducted as to insure the public of the wise use of funds; and

Whereas, a charity dependent upon public appeal or general solicitation for support can only insure the public of the wise use of funds, and meet the actual needs of this community, and attain a reasonable standard of efficiency by being under the control of our own citizens, and subject to local laws and regulations;

Therefore Be It Resolved, that as a condition precedent to an endorsement, the Municipal Charities Commission will require a strict compliance on the part of every applicant, with the following regulation; to-wit:

The title to all property, both real and personal, situate in the City of Los Angeles, wholly or in part acquired by any such charitable, philanthropic, or religious organization, firm or corporation, for eleemosynary, charitable, or philanthropic purposes through the donations of any kind or character by citizens of the City of Los Angeles, shall be vested in a corporation organized under the laws of California, a majority of whose directors or trustees shall be citizens and residents of the City of Los Angeles.

Exhibit "E."

ORDINANCE No. 34,982
(New Series)

An Ordinance creating a Social Service Commission and prescribing its powers and duties.

The Mayor and Council of the City of Los Angeles do ordain as follows:

Section 1. There is hereby created a Commission of the City of Los Angeles to be known and designated as the Social Service Commission. Said Commission shall consist of five members, not more than three of whom shall be of the same sex. They shall be appointed by the Mayor subject to confirmation by a majority of the Council. All of said Commissioners shall serve without compensation, and no person while serving as an officer or director of any corporation or association coming within the purview of this ordinance shall be eligible to serve as a member of said Commission. The terms of office of the members of said Commission shall be four years, provided however, that the terms of office of the five members of said Commission first appointed shall commence upon the date this ordinance becomes effective, and the members so appointed shall so classify themselves by lot that one shall go out of office on the first Monday in January, 1917, one on the first Monday in January, 1918, one on the first Monday of January, 1919, and two on the first Monday in January, 1920. If any vacancy occurs, the Mayor shall fill the same by appointment for the unexpired term, subject to confirmation by a majority of the Council. The Commission shall organize by electing one of its members president, who shall hold office for one year, and until his successor is elected unless his

term as a member of said Commission sooner expires; provided, however, that the president first elected shall hold office until his successor is elected unless his term as a member of said Commission sooner expires; said Commission shall elect a secretary and such other officers as may be necessary and shall hold such meetings at such times and places as it may fix by resolution.

Sec. 2. Said Commission shall have power:

1. To investigate, when requested, or permitted, by the officers or persons in charge thereof all charitable or philanthropic corporations or associations dependent upon public appeal or general solicitations for support, and submit quarterly, in writing, the result of such investigation to the Council.

2. To endorse such of said charitable corporations or associations as shall apply to said Commission for endorsement and prove to the Commission that they have complied with the following provisions, namely:

(a) That the title of any real property in the City of Los Angeles owned by such charitable corporations, or association is vested in the name of such charity, if it be a corporation, or else in the name or names of a responsible trustee or trustees under a declaration of trust or other written instrument setting forth the rights of said charitable corporation or association therein, and recorded in the records of the County Recorder of Los Angeles County.

(b) That the declared purposes for which such a corporation or association is organized are charitable or philanthropic, and not for the pecuniary profit of the members or associates thereof or any of them.

(c) That for three months prior to its endorsement said charitable corporation or association has faithfully complied with the following provisions with reference to its accounts, namely: All funds received by it, and all disbursements made by it, have been entered upon the books of its treasurer or other financial officer, receipts have been given or tendered for all moneys or other property donated to it, whenever required by law or ordinance; all expenditures other than petty cash to a reasonable amount have been made by checks signed by at least two officers of such corporation or association; that the bank book of such association or corporation has been balanced and reconciled with the books of account at reasonable intervals.

(d) That no moneys of said corporation or association are on loan directly or indirectly to any officer, director, trustee or employee thereof, and that the corporation or association for a period of three months prior to its endorsement has not invested any moneys constituting part of its permanent endowment funds except in securities legal as investments for savings banks within the State of California, and has not paid out more than 15% of any amount collected by solicitation within the City of Los Angeles for expense of solicitation, and has not diverted funds donated to it from any source to purposes other than those for which they were donated.

Provided, however, that the provisions of this paragraph shall not apply to any loan or investment that has been made prior to the passage of this ordinance.

(e) That the work for which such corporation or association has been organized has been faithfully performed.

(f) That the by-laws and other written rules and regulations of such corporation or association defined the powers and duties of the officers of such corporation or association, and that a copy of the Articles of Incorporation of said charity, if it be a corporation, and a copy of the By-Laws and other written rules and regulations of such corporation or association have been filed with the Social Service Commission.

(g) That within three months prior to its endorsement such corporation or association has not violated any law or ordinance applicable to it.

(h) That the officers and employees of such corporation or association are persons of good moral character and reputation and that the corporation or association has exercised reasonable care in selecting persons of good moral character and reasonable experience as solicitors for its funds.

Said Commission shall issue said endorsement to any such corporation or association as shall comply with the aforesaid requirements. Said endorsement shall be valid for such time as shall be fixed by the Commission but not exceeding one year from date of its issuance.

Said Commission shall report to the Council upon request by it the name of any corporation or association which is endorsed or has been refused endorsement by it, with a general statement of the reasons for its refusal.

Said Commission shall also have power to request any endorsed corporation or association to make application for a new endorsement at or after the end of each fiscal year or at an earlier period if the Commission shall deem such requirement advisable, and if said corporation or

association shall not so do its endorsement shall be withdrawn.

(3) To encourage the formation of new private charities to meet needs that are not already provided for and to foster all worthy enterprises of a charitable or philanthropic nature.

(4) To collect and preserve statistics relating to charities and unemployment and to suggest means of improving the conditions producing the need of relief.

(5) To maintain a constant survey of the field of charities with regard to the need and the work being done in connection therewith, and to secure intelligent co-operation among all charities in the city to the end that a comprehensive and economical plan in philanthropy may be attained.

(6) To disburse all funds set apart by the City for charitable purposes and to make and file a quarterly report with the City Council of the work done in connection therewith.

(7) To receive donations, gifts or bequests to be used for charitable or philanthropic purposes and to administer any trust declared or created for any such purpose in accordance with the terms of said trust.

Sec. 3. That the Municipal Charities Commission created by Ordinance No. 27,510 (New Series), approved May 6, 1913, is hereby abolished and the terms of office of the members thereof are discontinued, and said Ordinance No. 27,510 (New Series), entitled, "An Ordinance creating a Municipal Charities Commission, and prescribing its powers and duties," approved May 6, 1913, and all ordinances amendatory thereof, be and the same are hereby repealed.

Sec. 4. The City Clerk shall certify to the passage of this ordinance by a unanimous vote and cause the same to be published once in The Los Angeles Daily Journal.

I hereby certify that the foregoing ordinance was introduced at the meeting of the Council of the City of Los Angeles of October 17, 1916, and was passed at its meeting of October 25, 1916.

CHAS. L. WILDE,
City Clerk.

Approved this November 1, 1916.

F. T. WOODMAN,
Mayor.

SUPREME COURT OF THE UNITED STATES

No. 103.—October Term, 1946.

The Gospel Army, a Corporation, Appellant, *v.* The City of Los Angeles, Board of Social Service Commissioners, Department of Social Service, et al.	Appeal from the Supreme Court of the State of California.

[June 9, 1947.]

Mr. Justice Rutledge delivered the opinion of the Court.

This is a companion case to *Rescue Army* v. *Municipal Court of the City of Los Angeles*, 331 U. S. —, decided today. Because we dismiss the appeal in this cause for jurisdictional reasons, the facts may be shortly stated.

The Gospel Army is an incorporated religious organization. The trial court found that it is "engaged exclusively in the promulgation, by literature and word of mouth, of its religious beliefs, by and through its auxiliaries and in the procuring of donations in the form of money and articles of value in the prosecution and furtherance of its religious activities." More particularly, its activities consist of conducting a mission, distributing religious books without charge, giving aid to the poor. It collects salvage which it either sells in a second-hand goods store,[1] distributes directly to the poor, or sends to a salvage mill.[2]

[1] The money received from the sales is used to meet the cost of operating the store, including compensation paid to the manager and to those who solicit contributions. Whatever remains goes into the corporate treasury.

[2] Ninety per cent of the money received for the goods sent to the salvage mill is paid to the drivers of trucks used by the Gospel Army to collect the salvage. The other ten per cent goes into the treasury.

The Gospel Army instituted this suit to enjoin the enforcement of certain ordinances of the City of Los Angeles on the ground that they violate its religious liberty under the Constitutions of California and the United States.[3]

After trial the Superior Court of Los Angeles County broadly concluded:

> "That a permanent injunction should issue herein restraining and enjoining the Defendants and each of them and any and all persons, associations, departments under whom said Defendants or any of them may be employed or acting and any and all persons, associations or departments who may be acting or claiming by, through or under said Defendants, or any of them from the further interference and threatened acts, which would in any way prevent the free exercise of a religious liberty of said Plaintiff."

From this decision an appeal was taken to the District Court of Appeal of the Second Appellate Division, Division Two, and the cause was then transferred to the Supreme Court of California. That court held, three judges dissenting, that the Superior Court's action in granting the injunction was erroneous. 27 Cal. 2d 232. Some, if not all, of the ordinances in suit were sustained as constitutional. On appeal to this Court determination of jurisdiction was postponed to the merits. 329 U. S. —.

The jurisdictional difficulties arise from the form of the California Supreme Court's judgment. That court ended its opinion with the statement, "The judgment is reversed." Its judgment was in the same form: "It is Ordered, Adjudged, and Decreed by the Court that the Judgment of the Superior Court in and for the County of Los Angeles in the above entitled cause, be and the same

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[3] It is unnecessary to consider precisely what ordinances were involved in this case or were sustained by the California Supreme Court. See *Rescue Army* v. *Superior Court*, 331 U. S. —.

is hereby reversed." In California an unqualified reversal, "that is to say, without direction to the trial court," is effective to remand the case for a new trial and places the parties in the same position as if the case had never been tried." *Erlin* v. *National Union Fire Ins. Co.*, 7 Cal. 2d 547, 549; *Stearns* v. *Aguirre*, 7 Cal. 443, 448; *Central Sav. Bank* v. *Lake*, 201 Cal. 438, 443; *Richfield Oil Corp.* v. *State Board of Equalization*, 329 U. S. 69, 72; 2 Cal. Jur. § 590.

Under § 237 of the Judicial Code, 28 U. S. C., § 344, only "final judgments" of state courts may be appealed to this Court. And it frequently has been said that for a judgment of an appellate court to be final and reviewable for this purpose it must end the litigation by fully determining the rights of the parties, so that nothing remains to be done by the trial court "except the ministerial act of entering the judgment which the appellate court . . . directed." *Department of Banking* v. *Pink*, 317 U. S. 264, 267. Thus, where the effect of the state court's direction is to grant a new trial, the judgment will not be final.

Increasingly this Court has become less formal in the matter of final judgments. It is no longer the rule that the face of the judgment is determinative of whether it is final.[4] Today "the test is not whether under local rules of practice the judgment is denominated final . . . but rather whether the record shows that the order of the

[4] For cases incorporating the old "face of the judgment" rule, see, *e. g.*, *Bruce* v. *Tobin*, 245 U. S. 18; *Schlosser* v. *Hemphill*, 198 U. S. 173; *Haseltine* v. *Central National Bank*, 183 U. S. 130. There was strong dissent to the abandonment of the rule. See the separate opinion of McReynolds, J., in *Clark* v. *Williard*, 292 U. S. 112, 129. And for general discussion, cf. Boskey, Finality of State Court Judgments under the Federal Judicial Code (1943) 43 Col. L. Rev. 1002, 1003–1008; Robertson and Kirkham, Jurisdiction of the Supreme Court of the United States (1936) 54–57.

appellate court has in fact fully adjudicated rights and that that adjudication is not subject to further review in a state court: . . ." *Department of Banking* v. *Pink*, 317 U. S. at 268.

Thus, this term in *Richfield Oil Corp.* v. *State Board of Equalization*, *supra*, despite the fact that the Supreme Court of California had reversed a judgment without directions, we determined on the entire record and upon an independent investigation of California law that the judgment was final for the purposes of § 237. In the first place, the facts had been stipulated and, so far as appeared, the stipulation would have been available and controlling upon a second trial. In the second place, the suit was one for a refund of a tax and under California law only those grounds presented in the prior claim for refund could be urged in the suit. The opinion stated: "Since the facts have been stipulated, and the Supreme Court of California has passed on the issues which control the litigation, we take it that there is nothing more to be decided." 329 U. S. at 73–74.

In this case, however, the facts have not been stipulated, nor are there any special procedural restrictions. Thus, under California law, the Gospel Army on the second trial to which it is entitled may amend its complaint and present new facts. "Such a reversal remands the case for a new trial and places the parties in the same position as if the case had never been tried. . . . Of course, upon a retrial the decision of the appellate court becomes the law of the case upon the facts as then presented. But that law must be applied by the trial court to the evidence upon the second trial. 'It is settled beyond controversy that a decision of this court upon appeal, as [to] a matter of fact, does not become the law of the case.'" *Erlin* v. *National Union Fire Ins. Co.*, 7 Cal. 2d at 549.

We cannot assume that the Supreme Court of California would hold the ordinances in question constitutional no matter what facts might be presented upon a second trial. Indeed, experience demonstrates that particularly in constitutional cases issues turn upon factual presentation.

Accordingly, the case does not fall within the specific holding of the *Richfield Oil* case, for, although the modern rule is that in determining whether the state court's remand is for a new trial this Court will examine both the judgment and the opinion as well as other circumstances which may be pertinent, *Department of Banking* v. *Pink, supra; Richfield Oil Corporation* v. *State Board of Equalization, supra,* this does not mean that in the ordinary case we will disregard the effect of the judgment under the local law. In this case, for example, the effect of the judgment under state practice is to remand the case for a new trial. Nothing in the opinion of the court is to the contrary. We cannot assume that the state court made an error in its judgment, clerical or otherwise. If the parties had thought so, they could have moved to have it amended. Indeed, that course may still be open to them.

The appeal is dismissed.